TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 15.

THE ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE NORTH CAROLINA CORPORATION COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED MARCH 6, 1905.

(19,645.)

(19,645.)

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vs.

THE NORTH CAROLINA CORPORATION COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

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Error to the Supreme Court of North Carolina.

THE NORTH CAROLINA CORPORATION COMMISSION, Plaintiff,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

To the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States:

Now comes The Atlantic Coast Line Railroad Company, the above named defendant and appellant, by its attorneys John G. Johnson, Warren G. Elliott, Junius Davis, and Pou & Fuller, and complains and alleges that it is a corporation organized and existing under the laws of the State of Virginia, and is authorized by the laws of North Carolina to carry on business in the State of North Carolina; that in the above-entitled matter on the 13th day of December, 1904, final judgment was rendered against your petitioner by the supreme court of the State of North Carolina, that being the highest court of law and equity in said State of North Carolina, wherein it was adjudged that the order of the corporation commission, made on the 13th day of February, 1904, requiring defendant to so run its trains that one of its passenger trains from the North might make connection between Rocky Mount and Selma between the hours of 12.50 o'clock p. m. and 2.25 p. m., even if such order required the putting on between said points of an additional train, was a valid order and should be and was thereby affirmed and made effective from and after February 10th, 1905; and that such order and requirement, although entailing a net loss upon the defendant of fifteen dollars a day, was not a denial to petitioner of its rights under the fourteenth amendment to the Constitution of the United States, nor was it a taking of its property without compensation and without due process of law and in contravention of the Constitution of the United States. That it was further adjudged by the said supreme court, by its said final judgment in the above entitled matter, that it was lawful for the said North Carolina Corporation Commission to require the petitioner to run an additional train between Rocky Mount and Selma every day at a net loss of fifteen dollars per day, for the sole purpose of enabling persons who desired to travel on the Southern railway from Selma westward, although the petitioner was running seven trains every day each way, carrying passengers between Rocky Mount and the Southern railway, four of said trains running between Rocky Mount and Selma, and three of said trains running between Rocky Mount and Goldsboro, both of said points being upon the Southern railway and three of said trains making close connection with the Southern Railway trains bound westward each day, and that such orders would not be a deprivation of petitioner of its property, nor would

it be requiring of petitioner service without compensation, nor a denial to it of any immunities or rights granted to it by the Constitution of the United States or the amendments thereto, nor would it be taking from petitioner its property without compensation and without due process of law, in violation of the Constitution of the United States and the amendments thereto. All of which appear in the record, opinion, and final judgment of said supreme court, adjudging that the said order of the North Carolina Corporation Commissioner was a legal and constitutional requirement of this petitioner, and directing that the said order be enforced by this petitioner under the pains and penalties denounced by the laws of North Carolina for failure to enforce the same, which fines and penalties so prescribed by the laws of North Carolina for the failure to enforce such order of the North Carolina Corporation Commission, if the same be valid, is not less than five hundred dollars nor more than five thousand dollars for each and every offence, and each day's failure to carry into effect such order is declared to be a separate and distinct offence; whereby manifest error has happened, to the very great damage of your petitioner, who has filed with this petition its assignment of error.

Wherefore, your petitioner presents herewith an exemplified transcript of the record of the supreme court of North Carolina in
c said case and prays that a writ of error to said supreme court be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that, upon compliance with the terms of the statute in such cases made and provided, said bond and writ of error may operate as a supercedeas, and that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of the supreme court of the State of North Carolina be reversed.

JOHN G. JOHNSON,
WARREN G. ELLIOTT,
JUNIUS DAVIS,
POU & FULLER, Of Counsel.

d UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of North Carolina, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The North Carolina Corporation Commission, plaintiff, and The Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty

or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable, Melville W. Fuller, Chief Justice of the United States, the 15th day of February in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
EDWARD D. WHITE,
Associate Justice of the Supreme Court
of the United States.

UNITED STATES OF AMERICA, ss:

To the North Carolina Corporation Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of North Carolina wherein The Atlantic Coast Line Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the

Supreme Court of the United States, this 15th day of February, in the year of our Lord one thousand nine hundred and five.

EDWARD D. WHITE,
Associate Justice of the Supreme Court
of the United States.

The North Carolina Corporation Commission, defendant in error hereby accept services of this citation, & waives all other service or notice, this Feb. 20th 1905.

[Seal North Carolina Corporation Commission.]

NORTH CAROLINA CORPORATION COMMISSION,
By FRANKLIN McNEILL, Chairman.
H. C. BROWN, Clerk.

g

In the Supreme Court.

THE NORTH CAROLINA CORPORATION COMMISSION, Plaintiff,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Assignments of Error.

Now comes The Atlantic Coast Line Railroad Company, the defendant in the above entitled cause, and respectfully represents that it feels aggrieved by the proceedings and judgment of the supreme court of North Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

First.

That the said supreme court of North Carolina erred in holding and adjudging that under section 21, chapter 164 of the Public Laws of 1899, the plaintiff had the right to require the defendant to run a passenger train between the town of Rocky Mount and the town of Selma, in said State, leaving Rocky Mount after 12.50 p. m. and arriving at Selma at or before 2.25 p. m. each day.

Second.

That the said court erred in holding and adjudging that under said section 21 of chapter 164, Public Laws of 1899, the said plaintiff had the right to require the defendant to run a passenger train, leaving Rocky Mount after 12.50 p. m. and reaching Selma at or before 2.25 p. m., when, to obey said order, necessitated the operation by defendant between said stations of another train in addition to the four trains each way every day carrying passengers in operation by defendant between said stations.

Third.

That the said court erred in holding and adjudging that the plaintiff had the power to require of the defendant the putting on of an additional train for the sole purpose of conveniencing passengers who desired to travel on the Southern railway from Selma westward, when it appeared that the defendant was already furnishing transportation between Rocky Mount and the Southern railway by seven passenger trains each way daily, three of which seven passenger trains made close connection every day with west-bound trains of the Southern railway at Goldsboro and Selma.

Fourth.

That the said court erred in holding and adjudging that the defendant had the power and right to require the defendant to operate an additional train for the convenience of passengers desiring to travel on the Southern railway from Selma westward, when it appeared that the trains of the defendant had for about ten years been scheduled to reach Selma at 2.50 p. m., which was prior to the leaving time of the Southern railway's west-bound train from Selma, and when it appeared that shortly before the making of the said order by the plaintiff the said Southern Railway Company had advanced the time for its said train to leave Selma from three o'clock p. m. to two thirty-five o'clock p. m., and when it further appeared, and was so found as a fact by the North Carolina Corporation Commission, that the defendant could not so increase the schedule of its trains then running between Rocky Mount and Selma that they could reach Selma by the time the Southern railway train would leave under its new schedule, and that such connection could only be afforded by the placing upon said road of additional service by defendant.

Fifth.

That the said court erred in holding and adjudging that the plaintiff had the right and power to require the defendant to operate an additional train between Rocky Mount and the Southern railway every day at a net loss of fifteen dollars per day for the sole convenience of passengers desiring to travel on the trains of the Southern railway from Selma westward, when the defendant was already furnishing transportation for passengers between Rocky Mount and the junction points of the Southern railway by seven trains each way daily, three of which made close connection with west-bound trains of the Southern railway, and when defendant was maintaining with regard to the Southern railway practically the same schedule which had been in force for ten years prior to the making of said order, the Southern railway, shortly before the making of said order, having advanced the time for the departure of its train from Selma by thirty-five minutes.

That in holding and adjudging that the plaintiff had the power to make such order, and in adjudging and decreeing that the said order of the plaintiff should be enforced by the defendant from and after the 10th. day of February, 1905, notwithstanding the loss incurred as aforesaid, the said court denied to the defendant and its property the equal protection of the law and deprived it of its property without due process of law, contrary to the Constitution of the United States and the amendments thereto. That the effect of such judgment and decree of the said court, if carried into effect, would be to abridge the defendant of its rights, privileges, and immunities guaranteed to it as a citizen of the United States by the Constitution of the United States and the amendments thereto, and would deprive it of its property without compensation and without due process of law, and would deny to it the equal protection of the law.

Sixth.

That the said court erred in holding and adjudging that, notwithstanding there was no allegation that the defendant had failed to provide all necessary, proper, and adequate service for the transportation of passengers over its own lines, the plaintiff had the right and power to require it to operate over a portion of its said lines, to-wit, between Rocky Mount and Selma, an additional train, at a daily net loss of fifteen dollars, solely for the convenience and benefit of persons desiring to travel on trains of the Southern railway westward from Selma. That such judgment and decree, putting in force the said order of the plaintiffs from and after the 10th. day of February, 1905, deprived defendant of its property without due process of law, would deny to it the equal protection of the law, would abridge defendant's rights and immunities as a citizen of the
j United States, guaranteed to it by the Constitution and laws of the United States, and would be in violation of the fourteenth amendment to the Constitution of the United States.

Seventh.

That the said court erred in holding and adjudging that, notwithstanding it is a fact that no allegation or complaint has been made that the defendant is failing to furnish ample and sufficient accomodation over its line between Rocky Mount and Selma, by means of four trains carrying passengers each way every day, upon schedules adapted to the requirements of defendant's business and the convenience of its passengers, the plaintiff had the right and power to require it to operate a fifth train each way every day between said points for the sole convenience of passengers wishing to travel on trains of the Southern railway from Selma westward. That such judgment and decree, putting in effect the plaintiff's said order from and after the 10th. day of February, 1905, was a denial to defendant of the equal protection of the law and an abridgement of the rights and immunities guaranteed to it as a citizen of the United States by

the Constitution and laws of the United States, and deprived defendant of its property without compensation and without due process of law, and in violation of the Constitution and laws of the United States.

Eighth.

That the said court erred in holding and adjudging that the order of the plaintiff requiring the defendant to operate an additional train when there was no allegation of insufficiency of service over its own line, and at a loss, and solely for the convenience of passengers desiring to traval over another railroad, was not in violation of the Constitution of the United States.

Ninth.

That the said court erred in holding and adjudging that, although defendant was givinf adequate and necessary service over its own lines, it could be required to put on additional service and operate the same at a loss, solely for the convenience of passengers desiring ing to travel on another railroad, for and because of the fact k that defendant's earnings from its operation was sufficient to enable it to run the said additional train at a loss and still pay operating expenses and some profit.

Tenth.

That the said court erred in holding and adjudging that the decision rendered by the judge of the superior court of Wake county in this cause, and set out in the record, was erroneous, and in reversing the same, whereas the said court should have affirmed the said decision of the judge of the superior court of Wake county.

JOHN G. JOHNSON,
WARREN G. ELLIOTT,
JUNIUS DAVIS,
POU & FULLER,
Of Counsel.

l Know all men, by these presents, that we, The Atlantic Coast Line Railroad Company, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto The North Carolina Corporation Commission in the full and just sum of five hundred dollars ($500.) to be paid to the said The North Carolina Corporation Commission its successors in office, certain attorney or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this fifteenth day of February, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the supreme court of North Carolina in a suit depending in said court between The North Carolina Cor-

poration Commission, plaintiff, and The Atlantic Coast Line Railroad Company defendant a final judgment and decree was rendered against the said The Atlantic Coast Line Railroad Company and the said The Atlantic Coast Line Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment and decree in the aforesaid suit and a citation directed to the said The North Carolina Corporation Commission, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Atlantic Coast Line Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ATLANTIC COAST LINE RAILROAD COMPANY,
By R. G. ERWIN, President. [SEAL.]
Attest: H. L. BORDEN, Secretary. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By L. E. CARMAN, Vice President.
Attest: CORTLANDT S. VAN RENSSELAER, Attorney

Sealed and delivered in presence of
W. R. SULLIVAN.
R. D. CRONLY.

Approved by
EDWARD D. WHITE,
Associate Justice of the Supreme Court U. S.

m STATE AND COUNTY OF NEW YORK, *ss:*

On this 16th. day of February, 1905, before me, personally appeared L. E. Carman, vice president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resides in Nutley, New Jersey, that he is the vice president of the American Surety Company of New York, the corporation company described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of the said corporation do not exceed its assets as ascertained in the manner provided by law. And the said L. E. Carman further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said corporation,

that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto subscribed by the like order of the said board of directors, in the presence of him the said L. E. Carman vice president.

JAS. F. HARRISON, JR.,
[L. S.] Notary Public, New York County.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th. day of April 1893 the following resolution was adopted and is still in force:

"Resolved, That the president and vice presidents be, and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings however, to be attested in every instance by the secretary, one of the assistant secretaries or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and seal of the company at the city of New York this 16th. day of February, 1905.

[L. S.] CORTLANDT S. VAN RENSSELAER, Attorney.

1 STATE *ex Rel.* THE NORTH CAROLINA CORPORATION COMMISSION
v.
THE ATLANTIC COAST LINE R. R. Co. } From Wake.

Before Brown, J. Plaintiff appealed.

Venue and Title.

STATE OF NORTH CAROLINA, Wake County.

STATE OF NORTH CAROLINA on the Relation of THE *the* NORTH Carolina Corporation Commission against THE ATLANTIC COAST LINE RAILROAD COMPANY.

At a superior court begun and held for the county of Wake, at the court-house in Raleigh, on the seventh Monday after the first Mon-

day in March, in the year of our Lord one thousand, nine hundred and four, and known and designated as the April term, 1904, before the Honorable Geo. H. Brown, Jr., judge.

Be it remembered, that heretofore to-wit, on the 23d day of February, 1904, the defendant, The Atlantic Coast Line Railroad Company, by its attorneys, Messrs. Davis & Davis and Pou & Fuller, upon an appeal by the said defendant from the order made by the North Carolina Corporation Commission, and the order overruling the exceptions of the said defendant in the matter of the schedule and connections of train of the Atlantic Coast Line Railroad Company and the Southern Railway Company at Selma, N. C., filed in the office of the clerk of the superior court of Wake county, and caused to be there docketed a transcript of record from the North Carolina Corporation Commission, which transcript of record and the undertaking on appeal filed therewith are in words and figures as follows, to-wit:

2 Transcript of Record from North Carolina Corporation Commission.

Before the North Carolina Corporation Commission.

STATE OF NORTH CAROLINA on the Relation of THE NORTH Carolina Corporation Commission
against
THE ATLANTIC COAST LINE RAILROAD COMPANY.

In the Matter of the Schedule and Connection of Trains of the Atlantic Coast Line Railroad Company and the Southern Railway at Selma.

Be it remembered, that on the 3d day of October, 1903, a letter was received from the Southern Railway Company, reading as follows:

SOUTHERN RAILWAY COMPANY,
RALEIGH, N. C., October 3, 1903. P.

Hon. Franklin McNeill, chairman North Carolina Corporation Commission, Raleigh, N. C.

DEAR SIR: Referring to our conversation this morning in regard to change of schedule between Goldsboro and Greensboro, on Sunday, the 11th—

I have just received a telegram from Mr. Ackert, and our intention is to change the schedule as follows:

No. 135—
Leave Goldsboro at 1:35 instead of 2:05 p. m.
Leave Selma at 2:25 instead of 3:00 p. m.
Leave Raleigh at 3:25 instead of 3:52 p. m.
Arrive Greensboro same as now, 6:35 p. m.

No. 107—
Leave Goldsboro at 6:50 instead of 7:20 a. m.
Leave Selma at 7:40 instead of 8:04 a. m.
Leave Raleigh at 8:40 instead of 8:56 a. m.
Arrive at Greensboro same as now, 11:59 a. m.

3 No. 136—
Leave Greensboro at 1:27 p. m., same as now.
Arrive Raleigh at 4:50 instead of 4:17 p. m.
Arrive Selma at 5:50 instead of 5:14 p. m.
Arrive Goldsboro at 6:40 instead of 6:00 p. m.

No. 108—
Leave Greensboro at 7:20 instead of 7:50 a. m.
Arrive Raleigh at 10:30, same as now.
Arrive Selma at 11:30 instead of 11:24 a. m.
Arrive at Goldsboro at 12:20 instead of 12:10 p. m.

Yours very truly,
(Signed) A. B. ANDREWS,
First Vice-President.

North Carolina Corporation Commission.

RALEIGH, N. C., October 6, 1903.

Mr. J. R. Kenly, general manager, Wilmington, N. C.

DEAR SIR: I am directed by the commission to hand you the proposed change at an early day in the schedule of the Southern railway between Goldsboro and Greensboro, which is as follows:

No. 135—
Leave Goldsboro at 1:35 instead of 2:05 p. m.
Leave Selma at 2:25 instead of 3:00 p. m.
Leave Raleigh at 3:25 instead of 3:52 p. m.
Arrive Greensboro same as now, 6:35 p. m.

No. 107—
Leave Goldsboro at 6:50 instead of 7:20 a. m.
Leave Selma at 7:40 instead of 8:04 a. m.
Leave Raleigh at 8:40 instead of 8:56 a. m.
Arrive Greensboro same as now, 11:59 a. m.

No. 136—
Leave Greensboro at 1:27 p. m., same as now.
Arrive at Raleigh at 4:50 instead of 4:17 p. m.
Arrive Selma at 5:50 instead of 5:14 p. m.
Arrive Goldsboro at 6:40 instead of 6:00 p. m.

4 No. 108—
Leave Greensboro at 7:20 instead of 7:50 a. m.
Arrive Raleigh at 10:30, same as now.
Arrive Selma at 11:30 instead of 11:24 a. m.
Arrive Goldsboro at 12:20 instead of 12:10 p. m.

This proposed change in the schedule of the trains on the Southern railway appears to the commission to be reasonable, and I am directed to ask if you can not have your train No. 39 quickened so as to reach Selma at 2:25 p. m., instead of 2:50 p. m., in order to make the connection with the Southern railway as at present.

Kindly let the commission have an early reply, and oblige.

Very respectfully,

(Signed) H. C. BROWN, Clerk.

Atlantic Coast Line Railroad Company.

WILMINGTON, N. C., October 8, 1903.

Mr. H. C. Brown, clerk North Carolina Corporation Commission, Raleigh, N. C.

DEAR SIR: Your communication of October 6th presenting proposed changes in the passenger train service on the Southern railway between Goldsboro and Greensboro duly received, and same has been referred to Mr. E. Borden, our general superintendent of transportation, who has charge of all our schedule matters.

I am satisfied Mr. Borden will be glad to make the change in our train 39 as suggested by the commission if it is possible to do so. I am a little afraid that, as the schedule of this train extends continuously from Jersey City to Jacksonville, it will hardly be practicable to make so great a change at Selma as suggested. Mr. Borden, however, will write you fully in regard to it.

Yours very truly,

(Signed) J. R. KENLY.

5 Atlantic Coast Line Railroad Company, Office General Superintendent Transportation.

WILMINGTON, N. C., October 12, 1903.

Mr. H. C. Brown, secretary North Carolina Corporation Commission, Raleigh, N. C.

DEAR SIR: Your letter of October 6th, addressed to Mr. Kenly general manager, regarding proposed changes in the passenger service on the Southern railway between Goldsboro and Greensboro, with special reference to connection with our trains at Selma, has been referred to me for reply.

At the time our attention was called to the changes contemplated by the Southern railway, we made careful and thorough examination of our time-table, and advised General Manager Ackert, of the Southern railway, that the present arriving time of our train No. 39 at Selma (2:50 p. m.) was the very best that we could do. The schedule of train No. 39, as is now being operated, was fixed by the general schedule convention in May last. This is a regularly scheduled

train from New York to Montgomery, Ala., and Jacksonville, Fla., with many cross-line connections. The speed of t s train between Richmond and So. Rocky Mt. is 29.63 miles per hour. Deducting arbitraries at Petersburg, Emporia, Weldon and Rocky Mt. proper, the speed is 32.22. From So. Rocky Mt. to Selma, without deducting arbitraries, the speed is 30.75. Deducting the time lost by meeting two superior passenger trains, the speed is 34.16. Train No. 49, leaving Pinner's Point at 9:22 a. m., connects with this train at Rocky Mount. Its speed, not considering usual stops, is 33.46. To maintain the connection with the Southern railway at Selma, according to the figures submitted by them, will require No. 39 to pick up 30 minutes between Richmond and Selma. Deducting the arbitraries given above, without considering any essential stops, the train would have to run at a speed of 35.86, and break connection with No. 49 at Rocky Mount, unless we put No. 49 out of Pinner's Point 6 without waiting for any of the boat connections, which we, as well as the public, consider important. The speed of No. 39 to Selma is faster now than we desire; in fact, it is almost impossible to make the schedule. In looking over the reports for September, I find that this train only arrived at Selma during this period three times according to schedule. The present arriving time, however, has been held and every effort made to get the train to Selma on time on account of a hearty desire to hold the connection with the Southern railway, giving the patrons of eastern Carolina direct connection to Raleigh. No. 39 is a local train, making all stops, and daily handling one or two extra express cars; these, with other cars, frequently make a total of ten or more. At such stations as Petersburg, Emporia, Rocky Mt. and Wilson, the time required is necessarily longer than at smaller stations, therefore increases the speed of the train, and makes the running faster than indicated by schedule figures. South of Selma it is comparatively slow, only about 26 miles per hour between Selma and Fayetteville, and 32 miles from Fayetteville to Pembroke. The variation is due to the fact that we have connection with our own train at Fayetteville and S. A. L. at Pembroke, and if scheduled to reach Selma 30 minutes earlier, the speed would have to be further reduced to consume the time in order to make the two connections mentioned, thus making the speed from Selma to Pembroke about 23 miles per hour. If it had been practicable for us to have met the figures of the Southern railway, we should have done so.

I now have the question up with the N. Y., P. and N. R. R. at Norfolk, and the R. F. and P. as to whether they can arrange to deliver connection to us at an earlier hour. If they can do so, we feel that the slow speed of the train south of Selma will be unpopular to the traveling public.

Yours truly,

(Signed) E. BORDEN,
Gen. Supt. Trans.

7 Gilliam & Gilliam.

TARBORO, N. C., October 13, 1903.

Corporation Commission, Raleigh, N. C.

GENTLEMEN: The Southern railroad has changed its schedule at Goldsboro in the morning and at Selma in the afternoon, leaving both points about thirty minutes before the arrival of the Coast Line trains, rendering it impossible to make the connection at Goldsboro in the morning and at Selma in the afternoon. Leaving Tarboro at noon, we have to lay over at Selma and catch the midnight freight to Raleigh. Of course, you will readily see that this occasions a great deal of inconvenience to everybody in this section of the country, especially so in view of the approaching State fair. I am advised that there can really be no occasion for the change, for the reason that the Southern trains arrive at Greensboro under the new schedule at the same time that they previously did.

I would thank your commission to advise me how our people can best file with you a protest, and as to when there would likely be a hearing of the same.

Very truly,

(Signed) HENRY A. GILLIAM.

North Carolina Corporation Commission.

RALEIGH, N. C., October 16, 1903.

Henry A. Gilliam, Esq., Tarboro, N. C.

DEAR SIR: I am directed by the commission to acknowledge receipt of your letter in regard to the connection between the Atlantic Coast Line Railroad Company and the Southern Railway Company at Selma, and to say that the commission has taken this matter up with the railroad companies at once and will endeavor to have the connection restored.

Very respectfully,

(Signed) H. C. BROWN, Clerk.

8 North Carolina Corporation Commission.

RALEIGH, N. C., October 26, 1903.

Notice to Atlantic Coast Line Railroad Company and the Southern Railway Company, fixing Thursday, October 29, for hearing.

North Carolina Corporation Commission.

RALEIGH, N. C., October 29, 1903.

The matter of the schedule of passenger trains between Goldsboro and Greensboro and the connection at Goldsboro and Selma between the Atlantic Coast Line trains and the Southern Railway trains is called.

C. H. Ackert, general manager, W. A. Turk, passenger agent, and H. W. Miller, assistant to first vice-president, are present, representing the Southern Railway Company. E. Borden, superintendent of transportation, representing the Atlantic Coast Line Railroad Company, is also present.

The statement of the Southern Railway was that the running time of their trains between Goldsboro and Greensboro was too fast and positively dangerous, and this was their reason for having made the change in the schedule, leaving Goldsboro at an earlier hour, thereby breaking the connection at Selma by about thirty minutes; and that they would like to reduce the time between these points thirty minutes more.

The Atlantic Coast Line answers that their schedule between Washington, Richmond and Selma was as fast as they could possibly make it, and in fact they had hardly been able to make connection as it was, and they could not get to Selma thirty minutes earlier unless they could receive a train at Washington, D. C., thirty minutes earlier from the Pennsylvania road, as this train started from New York and carried through coaches to Florida points. The representative stated further that there would be a meeting in Washington on November the 6th, of the representatives of the various railroads in the South, with the view of agreeing upon schedules for the fall and winter, and at that time he would endeavor
9 to make an arrangement by which his company could leave Washington thirty minutes earlier.

The matter is continued for further information and investigation.

Atlantic Coast Line Railroad Company, Office Gen'l Supt. Transportation.

WILMINGTON, N. C., Nov. 9, 1903.

Mr. H. C. Brown, clerk N. C. Corporation Commission, Raleigh, N. C.

DEAR SIR: In accordance with my promise made to the commission at the meeting in Raleigh, I beg to advise that at a conference held at Washington on the 6th inst., the R. F. and P. joined the A. C. L. in asking the Penna. R. R. to deliver train 39 at Washington at 3:15 a. m. instead of 3:45 a. m., the present figures. In order to do this, we advised the Penna. R. R. that we would agree for the train to leave York at 9:00 p. m., instead of 9:30 p. m., thus disarranging the long and well-established leaving time of this train from New York. After taking a recess from 2:00 p. m. until 3:40 p. m., the Penna. R. R. reported that they would not be able to comply with our request, stating the objections, the principal one of which was that to make this change would bring about complications in the railway mail service. We then explained to the Penna. R. R. our reasons for asking for an earlier departure, which were due to the fact that the connection at Selma with the Southern Ry.

had been broken, and that it was desirable to re-establish this connection, and that our only recourse was to request an earlier arrival of the train at Richmond. We urged that they look further into the question and advise us if they could with the R. F. and P. arrange to deliver the train 30 minutes ahead of the present schedule. The Penna. R. R. agreed to look into the question further, and will advise us their final answer as soon as possible.

Yours truly,

(Signed) E. BORDEN,
Gen. Supt. Trans.

10 I beg to advise further that change in our No. 41 from Rocky Mt., making connection with Southern train leaving Goldsboro at 6:50, was made last Sunday the 8th inst.

North Carolina Corporation Commission.

RALEIGH, N. C., November 10, 1903.

Mr. E. Borden, superintendent transportation Atlantic Coast Line Railroad Company, Wilmington, N. C.

DEAR SIR: I am directed by the commissioners to acknowledge receipt of your letter, bearing date November 9th, touching the matter of the connection of your train at Selma with that of the Southern railway in the afternoon.

The commission has been waiting anxiously since this connection was broken at Selma with the hope that you would arrange to have same renewed, and it notes what you say in regard to the Pennsylvania railroad and the R., F. and P.; and the commission further requests that you take the matter up with them again at once, and they hope to have a wire message from you on Saturday, the 14th, addressed to them at Charlotte, to the effect that the connection is being made.

Very respectfully,

(Signed) H. C. BROWN, Clerk.

Atlantic Coast Line Railroad Company, Office Gen'l Supt. Transportation.

WILMINGTON, N. C., Nov. 13, 1903.

Mr. H. C. Brown, clerk N. C. Corporation Commission, Raleigh, N. C.

DEAR SIR: Referring to my letter of November 9th and your reply of the 10th, relative to an earlier arrival of No. 39 at Selma so as to make connection with the Southern railway at that point—

I beg to call your attention to the following telegram just received from Mr. W. W. Atterbury, general manager Penna. R. R.:

11 "We have taken up with the railway mail service and with the Adams Express Co. the question of changing train 55 leaving Jersey City at 10:00 p. m., which train controls the de-

parture of train No. 39 from Washington. Both present strenuous objections to our making any change, and the earlier departure would undoubtedly result in the diversion of a large amount of this business to other lines. I therefore regret that it will be impossible for us to make any change in train No 39."

The above message is in response to the strenuous efforts of the R. F. and P. and the A. C. L. to bring about the desired change. You will remember that this company is in no way responsible for the breaking of connection with the Southern railway at Selma; still we have used our utmost endeavors with a view of effecting its re-establishment, but without success. It is useless for me to reiterate that under the existing circumstances it is impossible for our train to reach Selma at an earlier hour.

You will recall that the old schedule was one which had been in force for a number of years, and its discontinuance, as stated above, was due to the changing of the schedule of the Southern Ry.

We regret exceedingly that our efforts to meet the wishes of the commission have been fruitless.

Yours truly,

(Signed) E. BORDEN,
Gen. Supt. Trans.

(Telegram.)

WILMINGTON, N. C., 11-14, 1903.

Franklin McNeill, chairman N. C. Corporation Commission, Charlotte, N. C.:

Am sorry to report Penna. R. R. advise impossible deliver No. 39, earlier hour. Wrote commission at Raleigh yesterday full on the subject.

(Signed) E. BORDEN.

12 North Carolina Corporation Commission.

RALEIGH, N. C., December 8, 1903.

In the Matter of the Schedule and Connection of Trains of the Atlantic Coast Line Railroad Company and the Southern Railway at Selma.

Whereas, the convenience of the traveling public requires that close connection be made between the passenger trains on the Atlantic Coast Line railroad and the Southern railway at Selma daily in the afternoon of each day;

And whereas, it appears that such close connection is practicable:

It is ordered that the Atlantic Coast Line railroad arrange its schedule so that the train will arrive at Selma at 2:25 p. m. each day, instead of 2:50 p. m., as the schedule now stands.

It is further ordered that if the Atlantic Coast Line trains have

passengers en route for Southern railway, and are delayed, notice shall be given to the Southern railway, and that the Southern railway shall wait fifteen minutes for such delayed trains upon receipt of such notice.

This order shall take effect December 20, 1903.

By order of the commission.

[SEAL.] (Signed) FRANKLIN McNEILL, Chairman.

[SEAL.] (Signed) H. C. BROWN, Clerk.

North Carolina Corporation Commission.

RALEIGH, N. C., December 8, 1903.

Col. A. B. Andrews, first vice-president Southern Railway Company, Raleigh, N. C.

DEAR SIR: By direction of the commission, I hand you herewith copy of its order in the matter of the schedule of the South-
13 ern railway train and the connection at Selma with the Atlantic Coast Line train in the afternoon.

Very respectfully,

(Signed) H. C. BROWN, Clerk.

Enc.

North Carolina Corporation Commission.

RALEIGH, N. C., December 8, 1903.

Mr. E. Borden, general superintendent transportation Atlantic Coast Line Railroad Company, Wilmington, N. C.

DEAR SIR: By direction of the commission, I hand you herewith copy of its order in the matter of the schedule of your train and the connection of same with that of the Southern railway train at Selma in the afternoon.

Very respectfully,

(Signed) H. C. BROWN, Clerk.

Enc.

Southern Railway Company.

RALEIGH, N. C., December 10, 1903. P.

Mr. H. C. Brown, clerk North Carolina Corporation Commission, Raleigh, N. C.

DEAR SIR: I beg to acknowledge receipt of your letter of December 8, enclosing, by direction of the commission, copy of order in the matter of the schedule of the Southern railway and the connection at Selma with the Coast Line, and I have sent a copy of same to Mr. Ackert, our general manager.

Yours very truly,

(Signed) A. B. ANDREWS,
First Vice-President.

Atlantic Coast Line Railroad Company, Office Gen'l Sup't Transportation.

WILMINGTON, N. C., December 14, 1903.

The North Carolina Corporation Commission, Raleigh, N. C.

GENTLEMEN: Your order to this company, received through
14 Mr. H. C. Brown, clerk to the commission, directing that the A. C. L. arrange its schedule so as to arrive at Selma with train No. 39 at 2:25 p. m. instead of 2:50 p. m., as the schedule now stands, has been received.

In reply, I beg to say that upon examination we find that the first schedule of train 39 between Wilson and Florence (via the Short Cut) was inaugurated December 3, 1903, and gave an arrival at Selma at 2:45 p. m.; September 29, 1895, the schedule was changed to 2:53 p. m.; November 16, 1896, 2:50 p. m.; May 16, 1897, 3:00 p. m.; November 28, 1897, 3:15 p. m.; January 17, 1898, 2:50 and 2:55 p. m.; November 18, 1899, 2:48 and 2:55 p. m.; November 30, 1902, 2:50 and 2:55 p. m., the present figures of this train. It is to be noted that practically the same schedule has been in effect since the inauguration of train 39 over the Short Cut, the earliest arrival at Selma being 2:45 p. m. and the latest 3:15 p. m. We have not been able to maintain the present arriving time at Selma, due to our northern connections delivering train late and increase of our own business along the line, which necessarily consumes more time at various stops. When notified by the Southern railway on September 11, 1903, that they proposed to make the leaving time of their train at Selma 2:25 p. m., I advised them that the present arriving time of 39 at this point was the very best that we could do, and that we were finding it exceedingly difficult to maintain this schedule. On October 6th, I further advised the Southern railway that if their train was scheduled to leave Selma at two-twenty-five p. m., this would break the connection with our No. 39, and stated to them that the connection was a most important one, being the principal outlet for passengers enroute from eastern Carolina to Raleigh and other points on their line, and that we hoped that they could see their way clear not to disturb the connection, as it was impossible for us to get No. 39 to Selma at an earlier hour than the present schedule, owing to the inabilty of northern connections to deliver the train to us at Richmond any sooner.
15 I immediately took up with Mr. Rodgers, of the N. Y. P. and N., the question of getting his boats to Norfolk earlier in order to permit No. 49 to leave that point so as to come to So. Rocky Mt. for No. 39, in case northern connections would deliver us No. 39 earlier; and at the same time, I took up with the R. F. and P., and urgently requested that they give us No. 39 earlier in order that we might go to Selma and connect with the Southern railway. Supt. Rodgers, of the N. Y. P. and N., and General Manager Duke, of the R. F. and P., advised as follows:

October 10, 1903, from Mr. Rodgers:

"Noting your favor of October 8th in reference to connection with

No. 97's connection at Norfolk, to be made 15 minutes earlier, I regret very much that we are unable to quicken up the time of our boat into Norfolk, as we already find the schedule a little bit faster than it should be.

"We now have up the question with the Penna. R. R. as to making an arrangement so as to make sure of getting to Norfolk at 8:45 a. m. We would like very much to connect with your boat, and would be glad to stop at Pinner's Point, when there are sufficient passengers to make it worth while, but could not do so, if we were off time at all, as we are compelled to make mail connection with the S. A. L. at Portsmouth.

"I sincerely hope you will be able to work out your schedule without losing connection with us."

On October 13, from Mr. Duke:

"I have your favor of the 9th inst., and note what you say about the schedule of train No. 39. You will remember we made an effort some time ago to secure an earlier arrival of this train at Richmond, and scheduled it to arrive at 8 o'clock, but the result was very unsatisfactory owing to the fact that it was difficult for us to get away from Washington on time.

"We have a local accommodation train from Fredericksburg to Richmond which arrives at Richmond at 8:15 a. m., so that setting the figures of train No. 39 up 15 minutes would not be prac-
16 ticable. It simply means that if any change is made, it must be a radical one, and we are not willing to take the chances of an habitual late departure from Washington without reasonably positive insurance that the train will be delivered to us on time. Our experience last winter lead to serious complaint from the Post-Office Department, and we are still being fined for late arrivals of this train, even though we do not lose more than 5 minutes on the schedule.

"I suppose that your suggestion will be discussed at the forthcoming time-table meeting, when we will be prepared to explain our position fully."

On October 26, I was notified by the commission that they desired me to be present at their office on the morning of Thursday, October 29, for a conference in regard to the Selma connection. I attended this meeting and explained fully to the commission the difficulties under which we were laboring, and endeavored to point out to them the impossibility of our train reaching Selma at any time ahead of the present arriving time, unless we could prevail upon northern connections to give us the train at least 30 minutes earlier at Richmond. At the request of the commission, all of the facts were presented at the general time-(table) convention, which was held at Washington, November 6, and I earnestly asked for No. 39 to be delivered to us 30 minutes earlier, and in order to do this I agreed to sacrifice our long-established leaving time from Jersey City, making the departure at that point 30 minutes earlier in order that the train might go to Washington that much earlier for delivery to us at Richmond; and we were notified by the Penna. R. R.

after recess and consideration of the matter, that they could not give us the train earlier, assigning as a reason the difficulties which might arise in connection with U. S. mail service. Mr. Emerson, at this time, explained to the Penna. R. R. the reasons for asking the 30 minutes earlier arrival of No. 39 at Washington, which was with a view of making connection with the
17 Southern railway at Selma, and that we further urged this connection owing to the request of the North Carolina commission; that we used our best efforts to influence the Penna. R. R. to give us the train 30 minutes earlier in order that the connection at Selma might be re-established; and Mr. Emerson requested the Penna. R. R. to take the matter under further consideration before giving final decision. On November 12, in answer to our request, the following telegram was received from Mr. Atterbury, gen. mgr. Penna. R. R.:

"Joint Duke and Borden:—We have taken up with the Railway Mail Service and with the Adams Express Company the question of changing train 55 leaving Jersey City at 10:00 p. m., which train controls the departure of train No. 39 from Washington. Both present strenuous objections to our making any change, and the earlier departure would undoubtedly result in the diversion of a large amount of this business to other lines. I therefore regret that it will be impossible for us to make any change in train No. 39."

Which was transmitted in my letter of November 13 to the commission, this letter reading as follows:

"Referring to my letter of November 9, and your reply of the 10th, relative to an earlier arrival of No. 39 at Selma so as to make connection with the Southern railway at that point—

"I beg to call your attention to the following telegram just received from Mr. W. W. Atterbury, gen. mgr. Penna. R. R.:

"'We have taken up with the Railway Mail Service and with the Adams Express Company the question of changing train 55 leaving Jersey City at 10:00 p. m., which train controls the departure of train No. 39 from Washington. Both present strenuous objections to our making any change, and the earlier departure would undoubtedly result in the diversion of a large amount of busi-
18 ness to other lines. I therefore regret that it will be impossible for us to make any change in 39.'

"The above message is in response to strenuous efforts of the R. F. and P. and A. C. L. to bring about the desired change. You will remember that this company is in no way responsible for the breaking of connection with the Southern railway at Selma; still we have used our utmost endeavors with a view to effecting its re-establishment, but without success. It is useless for me to reiterate that under the existing circumstances it is impossible for our train to reach Selma at an earlier hour.

"You will recall that the old schedule is one which has been in force for a number of years, and its discontinuance, as stated above, was due to the changing of the schedule of the Southern railway. We regret exceedingly that our efforts to meet the wishes of the [illegible] have been fruitless."

To sum up the question fairly, the schedule of No. 39 is entirely too fast Richmond to Selma, and fifteen minutes additional time should be added between So. Rocky Mt. and Selma, in order to equalize the schedule and insure the arrival of No. 39 at Selma on the present figures. The actual speed of this train from Richmond to Selma, after deducting necessary stoppages, is over forty miles per hour, which is just as fast as we can operate this train between these points; in fact, our experience has been that we are unable to make the present time, and give a connection with the Southern railway at Selma. This matter has been a frequent source of correspondence between this company and the Southern railway since 1900; during this time frequent complaints have been made to this company by the Southern railway of its failure to make the schedule time at Selma. In this connection we beg to remind the commission that the Atlantic Coast Line is not responsible for the breaking of this connection at Selma, and if we schedule the train to arrive at Selma as ordered by the commission, a thing which is impracticable for us to accomplish, it simply means to throw upon us
19 the responsibility for failure to make a connection which we did not break, and the severance of connection with line north of Richmond, thereby seriously delaying the mail. We enclose herewith daily reports of the arrival of train No. 39 at Selma from August 1 to December 10, showing an average daily delay in the arriving time of this train at that point of 34 minutes.

It would be our pleasure to comply with the order of the commission if it were practicable for us to do so; but the commission's instructions so far as the operation of the train is concerned—that is, making the arrival at Selma 2:25 p. m.—is impracticable, and we are sorry, therefore, that it is not in our power to overcome the difficulties which confront us. We beg to call your attention to another important fact: This train is a through train, made up in Washington, and consisting of from 8 to 10 cars, running solid from Washington to Jacksonville, carrying one of the most important commercial mails coming from the North to the South. Its schedule begins in New York city, and some of the cars run through from New York to Jacksonville. This train is delivered to us at Richmond, and as a matter of course we can not control its schedule beyond that point, and, as said before, we have made every effort in our power to effect the change desired by the commission, and have found it impossible, the Penna. R. R. having declined to make any change on account of objections made to it by the United States Mail Service.

We therefore respectfully and most earnestly urge the commission to withdraw its order as it is impossible for us to make the connection at Selma as ordered by the commission. If the commission desire a further conference, it will be our pleasure to have — representative in Raleigh at such time as may suit your convenience.

Yours very truly,

(Signed) E. BORDEN,
Gen. Supt. Trans.

20

Time of Train 39 at Selma.

October 26—December 10.

	Arriving time.	Leaving time.
Oct. 26th	3 04 p. m.	3 09 p. m.
27th	3 40 p. m.	3 45 p. m.
28th	3 25	3 30
29th	5 53	5 56
30th	4 12	4 16
31st	3 10	3 15
Nov. 1st	3 15	3 20
2nd	3 17	3 19
3rd	2 55	3 01
4th	4 50	5 00
5th	3 32	3 35
6th	3 20	3 24
7th	3 27	3 30
8th	4 35	4 38
9th	2 55	3 00
10th	3 16	3 19
11th	3 08	3 12
12th	3 12	3 15
13th	4 21	4 24
14th	4 09	4 13
15th	3 04	3 07
16th	3 10	3 18
17th	3 25	3 29
18th	3 07	3 11
19th	3 19	3 22
20th	3 50	3 53
21st	3 44	3 47
22nd	3 57	4 00
23rd	3 15	3 18
24th	3 24	3 28
25th	3 32	3 35
26th	4 38	4 41
27th	4 24	4 28
28th	4 54	4 57
29th	4 05	4 07
30th		
Dec. 1st	3 54	3 57
2nd	3 05	3 07
3rd	3 16	3 20
4th	3 40	3 44
5th	3 23	3 26
6th	3 27	3 37
7th	3 59	3 03
8th	3 15	3 18
9th	3 17	3 20
10th	3 38 p. m.	3 42 p. m.

21 Record of Train 39, August, 1903.

Date.	Arr'd Richmond. Mins. late.	Left Richmond. Mins. late.	Arr'd Selma. Mins. late.	Cars.
1	35	35	45	10
2	15	11	5	8
3	3	x	x	7
4	5	10	30	8
5	10	5	13	8
6	x	3	11	9
7	32	27	7	8
8	x	7	13	8
9	18	18	12	8
10	x	6	5	7
11	2	2	5	8
12	5	x	53	9
13	x	x	13	9
14	x	17	6	8
15	x	7	24	9
16	92	102	96	7
17	x	x	6	8
18	x	2	6	8
19	x	2	8	8
20	5	x	17	11
21	x	3	6	8
22	x	3	18	9
23	29	25	5	8
24	x	x	8	7
25	10	10	47	9
26	x	x	11	8
27	11	18	19	8
28	2	6	23	9
29	15	11	23	9
30	32	26	25	8
31	x	2	13	7
	298	356	589	246

I certify to the correctness of the above as taken from train sheet.

____ ____,
Supt. Trans.

October 26, 1903.

22 Record of No. 39, Month of September, 1903.

Date.	Arr'd Richmond. Mins. late.	Left Richmond. Mins. late.	Arr'd Selma. Mins. late.	Cars.
1	5	6	10	8
2	x	3	x	8
3	135	128	101	8
4	x	x	15	8
5	x	x	24	9
6	28	20	24	8
7	x	x	7	7
8	x	7	5	8
9	x	2	17	9
10	x	4	9	8
11	x	9	55	9
12	x	x	22	9
13	14	12	4	8
14	x	x	12	7
15	x	28	23	9
16	2	11	8	9
17	12	18	11	9
18	35	32	28	9
19	x	x	17	9
20	5	7	5	8
21	9	5	35	7
22	x	x	10	8
23	17	13	14	9
24	3	4	10	8
25	x	x	15	7
26	x	x	20	10
27	3	5	35	8
28	4	3	13	8
29	x	2	20	9
30	x	5	23	9
	272	324	572	250

I certify to the correctness of the above as taken from train sheet.

____ ____,
Supt. Trans.

October 26, 1903.

23 Record of No. 39, Month of October, 1903.

Date.	Arr'd Richmond. Mins. late.	Left Richmond. Mins. late.	Arr'd Selma. Mins. late.	Cars.
1	x	x	19	9
2	x	x	29	8
3	x	4	54	10
4	2	8	27	8
5	10	6	5	7
6	x	x	24	9
7	x	5	9	8
8	x	3	20	9
9	x	6	35	9
10	5	17	63	9
11	147	157	150	8
12	3	x	33	7
13	2	10	59	10
14	29	40	35	9
15	5	9	35	9
16	x	3	34	9
17	48	52	63	9
18	69	73	110	9
19	x	14	24	6
20	223	211	220	8
21	1	12	19	10
22	34	34	38	9
23	x	4	34	9
24	x	5	40	9
25	21	30	35	9
	599	703	1214	217

I certify to the correctness of the above as taken from our train sheets.

____ ____,
Supt. Trans.

October 26, 1903.

(Telegram.)

RALEIGH, N. C., December 16, 1903.

E. Borden, superintendent transportation Atlantic Coast Line Railroad Co., Wilmington, N. C.:

Your letter received. The commission would like to see you tomorrow.

(Signed) FRANKLIN McNEILL, Chairman.

24 North Carolina Corporation Commission.

RALEIGH, N. C., December 18, 1903.

In the Matter of Selma Connection.

Junius Davis, attorney, and E. Borden, superintendent of transportation appear before the commission and are heard touching the matter of the order of the commission in Selma connection.

North Carolina Corporation Commission.

RALEIGH, N. C., December 19, 1903.

In the Matter of Selma Connection.

It is ordered that the order in the matter of Selma connection, taking effect December 20, 1903, be and is suspended until further notice.

(Copy sent to E. Borden, superintendent transportation.)

Southern Railway Company.

RALEIGH, N. C., December 22, 1903. F.

Hon. Franklin McNeill, chairman North Carolina Corporation Commission, Raleigh, N. C.

DEAR SIR: Referring to order of the commission, dated December 8, directing the Atlantic Coast Line Railroad Company to arrange its schedule so as to arrive at Selma at 2:25 p. m. each day instead of 2:50 p. m., and directing that the Southern railway should wait fifteen minutes for any delayed train of the Atlantic Coast line upon receipt of notice:

Instructions have been issued by our operating department that our train No. 135 will be held at Selma as late as 2:40 p. m. to make connection with the Atlantic Coast Line when advised by the Atlantic Coast Line of passengers for our train.

Yours very truly,

(Signed) A. B. ANDREWS,
First Vice-President.

25 North Carolina Corporation Commission.

RALEIGH, N. C., January 6, 1904.

Mr. E. Borden, superintendent transportation Atlantic Coast Line Railroad Company, Wilmington, N. C.

DEAR SIR: I am directed by the commission to advise you that the hearing in the matter of the connection of the Atlantic Coast

Line train going south with that of the Southern Railway train going west in the afternoon is set for Tuesday, January 12, at the office of the commission.

Very respectfully,
(Signed) H. C. BROWN, Clerk.

North Carolina Corporation Commission.

RALEIGH, N. C., January 6, 1904.

Col. A. B. Andrews, first vice-president Southern Railway Company, Raleigh, N. C.

DEAR SIR: I am directed by the commission to notify you that the matter of the connection of the train of the Southern railway at Selma going west, in the afternoon, with that of the Atlantic Coast Line train going south in the afternoon, is set for hearing at the office of the commission on Tuesday, January 12th. The commission requests that you have a representative present on that date.

Very respectfully,
(Signed) H. C. BROWN, Clerk.

North Carolina Corporation Commission.

RALEIGH, N. C., January 12, 1904.

In the Matter of Schedule of Trains and Train Connection at Selma.

E. Borden, superintendent of transportation, and Junius Davis, attorney, representing Atlantic Coast Line Railroad Company, and H. W. Miller, assistant to first vice-president Southern Railway Company are heard. The situation is thoroughly discussed and the commission takes the matter under advisement.

26 North Carolina Corporation Commission.

RALEIGH, N. C., January 16, 1904.

In the Matter of the Schedule and Connection of Trains of the Atlantic Coast Line Railroad Company and the Southern Railway at Selma.

This cause coming on to be heard, upon exception by Atlantic Coast Line Railroad Company to order heretofore made, and being heard on the 12th day of January, 1904, the Atlantic Coast Line Railroad Company being represented by Mr. E. Borden, general superintendent of transportation, and Junius Davis, Esq., counsel; and the Southern Railway being represented by Mr. H. W. Miller, assistant to first vice-president; and upon a thorough and fuller hearing, the following facts appeared:

On December 3, 1893, a schedule was established by the Atlantic Coast Line Railroad Company on train No. 39 for its arrival at Selma at 2:45 p. m. This schedule has not been materially changed since that time. Since November 30, 1902, the arriving time of this train at Selma has been 2:50 p. m. and the leaving time 2:55 p. m. This train runs between Richmond, Va., and Jacksonville, Fla.

For a number of years the schedule of the Southern railway on train No. 135, running from Goldsboro to Greensboro, was so arranged as to make close connection with the Atlantic Coast Line train No. 39 at Selma, and from November 30, 1902, to October 11, 1903, the arriving time of this train at Selma was — and the leaving time 3:00 p. m.

The Atlantic Coast Line Railroad Company operates a train from Washington, N. C., to Parmele. This train leaves Washington at 8:00 a. m. and arrives at Parmele at 8:55 a. m., connecting at the latter place with the Atlantic Coast Line train from Plymouth to Rocky Mount, and returning leaves Parmele at 5.22 p. m. and arrives at Washington at 6:15 p. m.

27 The Atlantic Coast Line Railroad Company operates a train, No. 65, from Plymouth to Rocky Mount, which leaves Plymouth at 7:30 a. m. and arrives at Rocky Mount at 10:35 a. m. and returning leaves Rocky Mount at 3:55 p. m. and arrives at Plymouth at 6:35 p. m.

The Atlantic Coast Line Railroad Company operates a train, No. 49, from Norfolk, Virginia, to Rocky Mount. This train leaves Norfolk at 9:00 a. m. and arrives at Rocky Mount at 12:50 p. m.

The Atlantic Coast Line Railroad Company also operates train No. 68 from Spring Hope to Rocky Mount. This train leaves Spring Hope at 11:20 a. m. and arrives at Rocky Mount at 12:10 p. m., and returning leaves Rocky Mount at 4:00 p. m. and arrives at Spring Hope at 4:45 p. m.

The schedule of No. 39 at Rocky Mount was and is 1:10 p. m. For a number of years this connection at Selma was kept, and it was a most important connection, being the principal outlet for passengers en route from eastern Carolina to Raleigh and other points on the line of the Southern railway.

For the past year, although announced in the schedule of these railroad companies, the connection has not been kept. The reason for this failure was the fact that the Atlantic Coast Line train did not make the schedule time. The record of train sheets of the Atlantic Coast Line Railroad Company shows that No. 39 only arrived at Selma on schedule time twice between August 1, 1903, and January 11, 1904, and that during this period No. 39 was more than ten minutes late every day except twenty-four.

The rule required the Southern railway to hold train No. 135 at Selma ten minutes after schedule time for No. 39 of the Atlantic Coast Line; and, if this rule was adhered to, connection would only have been made twenty-four times during more than five months from August 1, 1903.

The commission was assured by general superintendent of transportation of the Atlantic Coast Line Railroad Company that the failures to keep this schedule at Selma were not by reason of
28 indifference or carelessness, but were unavoidable, and that every effort had been made to get the train to Selma on schedule time. That No. 39 is a local train, making all stops, and daily handling one or two extra express cars, and these with other cars making in all ten or more in the train.

It will thus be seen that while the Atlantic Coast Line train No. 39 was scheduled for arrival at 2:50 p. m. at Selma, that passengers in this route were disappointed and inconvenienced by the failure to connect.

On the 11th of October, 1903, the Southern railway changed its schedule of No. 135 for arriving at Selma from 2:50 p. m. to 2:25 p. m. The reason assigned by the Southern railway for this change was that the 2:50 p. m. schedule required them to run at too great speed in order to connect with its own trains at Greensboro, a speed that was dangerous.

Assuming that the statements made by the Atlantic Coast Line Railroad Company are true—that it was for the past five months impossible for them to bring No. 39 to Selma by schedule time, to-wit, 2:50 p. m., more than twice, and that this train was more than ten minutes late every day except twenty-four—we must conclude that it is impracticable to require them to make a faster schedule and place this train at Selma at 2:25 p. m. instead of 2:50 p. m.; and, therefore, this much of the former order is revoked and annulled; but the commission is of the opinion that it is practicable, and that the convenience of the traveling public requires, that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 p. m. and by or before 2:25 p. m. each day. That this can be done by extending the run of the Plymouth train to Selma instead of having it lie over at Rocky Mount as now, or by extending the run of the Spring Hope train to Selma instead of having it lie over at Rocky Mount as now. The distance from Plymouth to Rocky Mount is 69 miles, and from Spring Hope
29 to Rocky Mount is 19 miles, and from Rocky Mount to Selma 42 miles; or by providing a separate train for the service.

And it is therefore ordered that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 p. m. and by or before 2:25 p. m. each day.

It is further ordered that the Southern railway hold its train No. 135 at Selma fifteen minutes, if for any reason the Atlantic Coast Line train connecting at that point is delayed.

It is further ordered that this order take effect on and after the 26th day of January, 1904.

(Signed) FRANKLIN McNEILL, Chairman.

NORTH CAROLINA, }
City of Raleigh. }

JANUARY 26, 1904.

Before the Corporation Commission.

In the Matter of the Schedule and Connection of Train of the Atlantic Coast Line Railroad Company and the Southern Railway at Selma.

The Atlantic Coast Line Railroad Company, hereinafter called the company, excepts to the order and rule of the North Carolina Corporation Commission, hereinafter called the commission, made in the above-entitled matter, and bearing date January 16, 1904, upon the following grounds:

First Exception.

The company excepts to said order upon the ground that it is not practicable for it to extend the run of either the Plymouth train or of the Spring Hope train to Selma. That the line of the railroad between Rocky Mount and Selma is a part of the main line of the company and is equipped with a seventy-pound rail, and in other respects is constructed for the operation over it of heavy coal-burning engines, while to the contrary the line from Rocky Mount to Spring Hope, commonly called the Nashville branch, and the line from Rocky Mount to Plymouth, are branch lines and are constructed with a lighter rail, and in other respects are constructed and equipped for the use of lighter engines, which are fully sufficient and in every respect competent to do the work required of them on these branches. That the class of engines which is used by the company upon these branches is too light and is not of sufficient power and capacity to make the schedule which the order of the commission requires to be made between Rocky Mount and Selma. This schedule will require the run to be made in an hour and twenty-five minutes. This train can not leave Rocky Mount before 1 o'clock p. m. The train from Norfolk, No. 49, now reaches Rocky Mount at 12:50, and it will require at least ten minutes for the transfer of passengers, baggage and mail. This train would have to make seven regular stops at stations, and allowing three minutes for each stop, this will consume twenty-five minutes of the schedule time. Besides this, it would have to slow down when passing through the several towns upon its route, including the town of Wilson, on account of municipal regulations in regard to speed, and would also have to slow down at Contentnea, the junction of the main line with the old Wilmington and Weldon railroad. It would also have to meet two regular trains of superior class, No. 48, from Wilmington to Norfolk, at Elm City, and No. 40 at Micro, from Jacksonville to Richmond, which two trains have the right-of-way. This means that this additional train would have to

side-track at both these places to await the passage of the other two trains, and, if they are both on time, those two sidings will consume ten minutes at least. If these trains should not be on time, the stoppage would be prolonged. So that, in order to meet and keep the connection as ordered by the commission, this train would have to be run at an average speed of not less than forty-five miles an hour. The light engines which are used by the company on the Nashville branch and upon the Plymouth branch, while fully sufficient to meet all the requirements of their operation over said
31 roads, are not of sufficient capacity and strength to make this run. For another reason also it is impracticable to extend the run of this Plymouth train. According to the schedule established for a number of years, this train is due to leave Rocky Mount upon its return trip to Plymouth at 3:55 p. m., making the connection at Parmele with the train to Washington and also the train to Kinston. Under the schedule established by the commission for the extended run of this train to Selma, it would not reach Rocky Mount upon its return until 4:20 p. m., or later, and this would delay the other two trains for at least one-half hour, and would probably break the connection for passengers from the east going to Raleigh and points on the Southern via Kinston and the Atlantic and North Carolina to Goldsboro. This train over the Kinston branch takes passengers from Greenville and other points in the East to Kinston, and there connects at 7:37 p. m. with the Atlantic and North Carolina train, which in turn connects with the Southern at Goldsboro, leaving for Raleigh at 9:40 p. m.

Second Exception.

To the suggestion of the commission that this connection can be accomplished by running an extra or additional train from Rocky Mount to Selma between the hours of 12:50 p. m. and 2:25 p. m.

To run this train would require an engine, baggage car, and two coaches, and a train crew of six men; and this additional cost and expense to the company would be at least the sum of $65.00, and there would be no possibility of any increased revenue to the company from the operation of this train, but the said sum of $65.00 a day would be a total loss, amounting to an annual loss to the company of about $23,725.00. The regular fare from Rocky Mount to Selma is $1.35 for first-class passengers and $1.15 for second-class passengers. Such an additional train, if required to be run, would precede the regular train of this company, to-wit, No. 39, by
32 only half an hour, and returning to Rocky Mount it would follow a regular train of this company doing local work No. 40, at a very short interval. It would carry no passengers either way other than such as would travel an equal distance on other trains of this company if this additional train were not run. The company has had compiled from the records of the auditor's department a statement of the number of passengers transported over its line from the eastern part of the State from Southern Railway

points via Selma on train No. 39, for the six months of April, May, June, July, August and September, 1903, which shows a daily average of 11 8-10 passengers; for the three months of October, November and December, 1903, on train No. 58, a daily average of 3 45-100 passengers; and on train No. 31 for the same three months, a daily average of 4 8-10 passengers per day; copies of which said statements are hereto annexed and marked Exhibit "A," and are to be taken as a part of these exceptions. A statement was also obtained by it from all its conductors in charge of the trains mentioned above, which is embodied in Exhibit " B " hereto annexed, which is to be taken as a part of the exceptions. The company therefore excepts to the order of the commission in so far as it is to be construed as requiring it to run an additional train from Rocky Mount to Selma between the hours above named, because to do so would be requiring the company to perform services without compensation to it for the same, and thereby taking its property without due process of law, and in violation of the constitution of this State, and in violation of the Constitution of the United States.

Third Exception.

The company excepts to the order of the commission upon the ground that the commission has not power or authority under the law of North Carolina to compel or require this company to put on and operate an extra or additional train between Rocky Mount and Selma.

33

Fourth Exception.

The company excepts to the order of the commission upon the ground that it is not practicable for the company to make the said connection at Selma, as required by the order of the commission, without putting on an extra or additional train to do so, and this the company contends the commission has not the power to require it to do.

Fifth Exception.

That the order of the commission requiring this company to make the connection at Selma is unreasonable, because this company is already affording ample and sufficient accommodations for passengers from the East to Selma and points on the Southern Railway, and it does this in the following ways:

The train from Rocky Mount, southbound, in the early morning, makes a close connection at Goldsboro at 6:50 o'clock with the Southern for Raleigh and all points west.

The trains from Norfolk and Richmond make close connection at Goldsboro and Selma with the night train on the Southern for Raleigh and all points west.

The train from Weldon to Kinston makes close connection at Kinston with the Atlantic and North Carolina train for Goldsboro which train in turn makes close connection with the Southern at Goldsboro at 9:40 p. m. for Raleigh and all points west.

The train, No. 39, from Washington to Jacksonville, is due at Selma at 2:50 p. m., and the accommodation train, No. 183, on the Southern, from Selma to Raleigh and all points west, is scheduled to leave Selma at 3:25 p. m.

Train No. —, from Jacksonville to Washington, is due to arrive at Selma at 2:10 o'clock, and makes close connection there with the Southern, which leaves Selma at 2:25 p. m. for Raleigh and all points west.

Two trains leave Wilmington for the North, the first at 9:30 a. m., No. 48, and the other, No. 42, at 6:50 p. m. Both of these trains make close connection at Goldsboro with the Southern trains for Raleigh and all points west.

No. 34, leaving Smithfield at 7:00 a. m., makes close con-
34 nection at Selma with the Southern going west for Raleigh and all points beyond, and the same train makes close connection at Weldon with the Seaboard train for Raleigh, and for Seaboard points south and west.

No. 102 leaves Goldsboro for Norfolk at 7:30 a. m., and makes close connection at Hobgood with No. 58, the train from Kinston to Weldon, and there with the Seaboard for Raleigh and points west.

Particular attention is given herein to the connection over the Southern. Equally good connections, both going and returning, are made at Weldon with the Seaboard for Raleigh and other points west. There are few places in the territory served by this company from which a passenger can not reach Raleigh and other points on the Southern and Seaboard railway by either one of two different trains on the same day, all of which will appear by the schedule and reports hereto attached. While the morning train from Rocky Mount to Goldsboro leaves Rocky Mount at an early hour, the schedule was changed recently at the suggestion of this commission for the purpose of making close connection at Goldsboro with the Southern, which had previously advanced its hour for leaving Goldsboro.

Attached hereto is a sketch showing the connection from the eastern part of this State to Raleigh by way of the Coast Line, the Southern, and the Seaboard, and the company files it as a part of these exceptions, marked Exhibit "C."

All the matters and things herein alleged the company is ready to establish before this commission by competent evidence.

Wherefore, these exceptions considered, the Atlantic Coast Line Railroad Company respectfully asks that the order made on January 16, 1904, by the North Carolina Corporation Commission be revoked.

THE ATLANTIC COAST LINE R. R. CO.

DAVIS & DAVIS, (Signed)
POU & FULLER, (Signed)
Attorneys.

(Filed January 26, 1904.)

35 EXHIBIT "A."

Atlantic Coast Line Railroad Company, Accounting Department, Desk 3.

WILMINGTON, N. C., January 23, 1904.

Mr. J. R. Kenly, fourth vice-president, building.

DEAR SIR: As per your verbal request of this date, I beg to enclose you herewith the following statements:

Statement of number of passengers handled on train 39 for points on Southern railway via Selma, for the period April to September, 1903.

Statement showing number of passengers handled on train 51 for points on Southern railway via Selma, for three months ending December 31, 1903.

Statement showing number of passengers handled on train 58 for points on S. A. L. railway, via Weldon, for three months ending December 31, 1903.

I trust that these statements will give you the information desired.

Yours truly,

(Signed) GEO. S. LEGRAND,
Auditor of Passenger Receipts.

(Copy.)

Atlantic Coast Line Railroad Company, Accounting Department.

Statement Showing Number of Passengers Handled on Train 58 for Points on S. A. L. Railway, via Weldon, for Three Months endings December 31, 1903.

	No. pass.
October	148
November	50
December	120
Total	318

Correct: GEO. S. LEGRAND,
Auditor of Pass. Receipts.

Approved:
H. C. PRINCE, Comptroller,
S.

Wilmington, N. C., January 23, 1904.

92)318(3.45

36 (Copy.)

Atlantic Coast Line Railroad Company, Accounting Department.

Statement Showing Number of Passengers Handled on Train 39 for Points on Southern Railway, via Selma, for six Months ending September 30, 1903.

	No. pass.
April	197
May	265
June	306
July	358
August	376
School girls, September	659
Total	2161

Correct: GEO. S. LEGRAND,
Auditor of Pass. Receipts.

Approved:
H. C. PRINCE, Comptroller,
S.

Wilmington, N. C., January 23, 1904.

183)2161(11.8

(Copy.)

Atlantic Coast Line Railroad Company, Accounting Department.

Statement Showing Number of Passengers Handled on Train 51 for Points on Southern Railway, via Selma, for Three Months ending December 31, 1903.

October	213
November	79
December	132
Total	444

Correct: GEO. S. LEGRAND,
Auditor of Pass. Receipts.

Approved:
H. C. PRINCE, Comptroller,
S.

Wilmington, N. C., January 23, 1904.

92)444(4.8

37

EXHIBIT "B."

Atlantic Coast Line Railroad Company, Transportation Department.

WILMINGTON, N. C., January 23, 1904.

Mr. E. Borden, gen'l sup't transp., Wilmington, N. C.

DEAR SIR: The average number of passengers handled daily, by train from Raleigh via Weldon and S. A. L., from the Plymouth, Kinston and Washington branches, amounts to not more than one passenger. Prior to the time the connection at Selma was broken, the travel was divided between the Weldon and Selma junctions, but subsequent to then the observation of the conductors lead them to believe that the greater portion of the travel now routes via Weldon.

The travel on train 65 on Plymouth branch is so small the daily average can not be gotten at without some tangible record, but the conductor of the train observes that, prior to the breaking of the connection at Selma, the travel for Raleigh usually routed via Selma, but since then, with but few exceptions, has gone via Weldon. About one-half passenger is the daily average from the Washington branch, and 88 per cent. routes via Weldon and S. A. L., while prior to the breaking of the connection, the travel amounted to about 59 per cent. via Selma.

The town of Washington sold during September ten tickets to Raleigh via Selma, and five via Weldon. Thirty-seven tickets were also sold to Southern Ry. points via Selma. In December the Raleigh tickets via Weldon were 16, while via Selma there were but two. There were, however, ten tickets sold to Southern Ry. points via Selma.

The concensus of opinion among the conductors on train 39 — that the daily average passengers handled now for the Southern Ry. does not amount to over two, whereas prior to the breaking of the connection the average is estimated to have been twelve.

38 The daily average handled by train 31 for Southern Ry. through Selma, is estimated at present to be ten, while prior to the breaking of the connection the average is not more than two.

The average passengers handled by train 41 for Southern Ry. points via Goldsboro now is thought to be six, whereas prior to the breaking of the connection at Selma the average was not more than four.

Summarized, the daily average passengers handled by trains 31 and 39 now and prior to October 11, the date connection was broken, amounts to as follows:

Trains.	Handled prior Oct. 11. Average.	Handled after Oct. 11 Average.
39	12	2
31	3	10
Total.....	15	12

There see-s to be a loss of ten per cent. in the present average than what it was prior to October 11.

There is a gain of twenty per cent. on the present average handled by train 41 on the average prior to October 11. Train 39 lost 70 per cent., while train 31 gained 52 per cent. The gain by train 41 and the Weldon route may account for the 18 per cent. difference between the percentages of trains 31 and 39.

The conductors say that not much complaint is heard in regard to the connection at Selma having been broken, but just after it occurred there was some expression of inconvenience.

I have attached statements from about all the conductors handling the passenger trains involved.

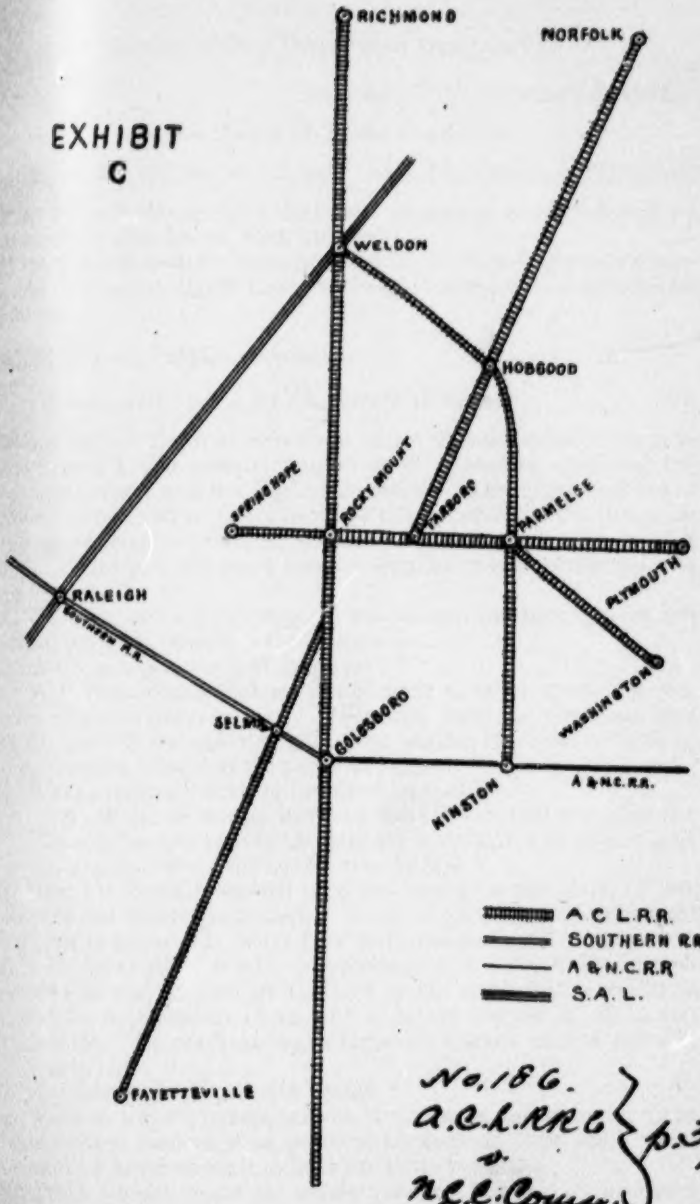
Rocky Mount, in September, sold 76 tickets to Raleigh, and 69 to other points via Selma and Southern Ry., and the agent says, that as far as he is now able to say, the travel went forward by trains 31 and 39. In December the same station sold 64 tickets to
40 Raleigh and 59 to other Southern Ry. points, and the travel was handled by trains 41 and 31. The average, you will note, was about four passengers daily for each month.

Yours respectfully,

(Signed) E. C. LUCAS.

(Here follows diagram marked p. 39.)

EXHIBIT
C



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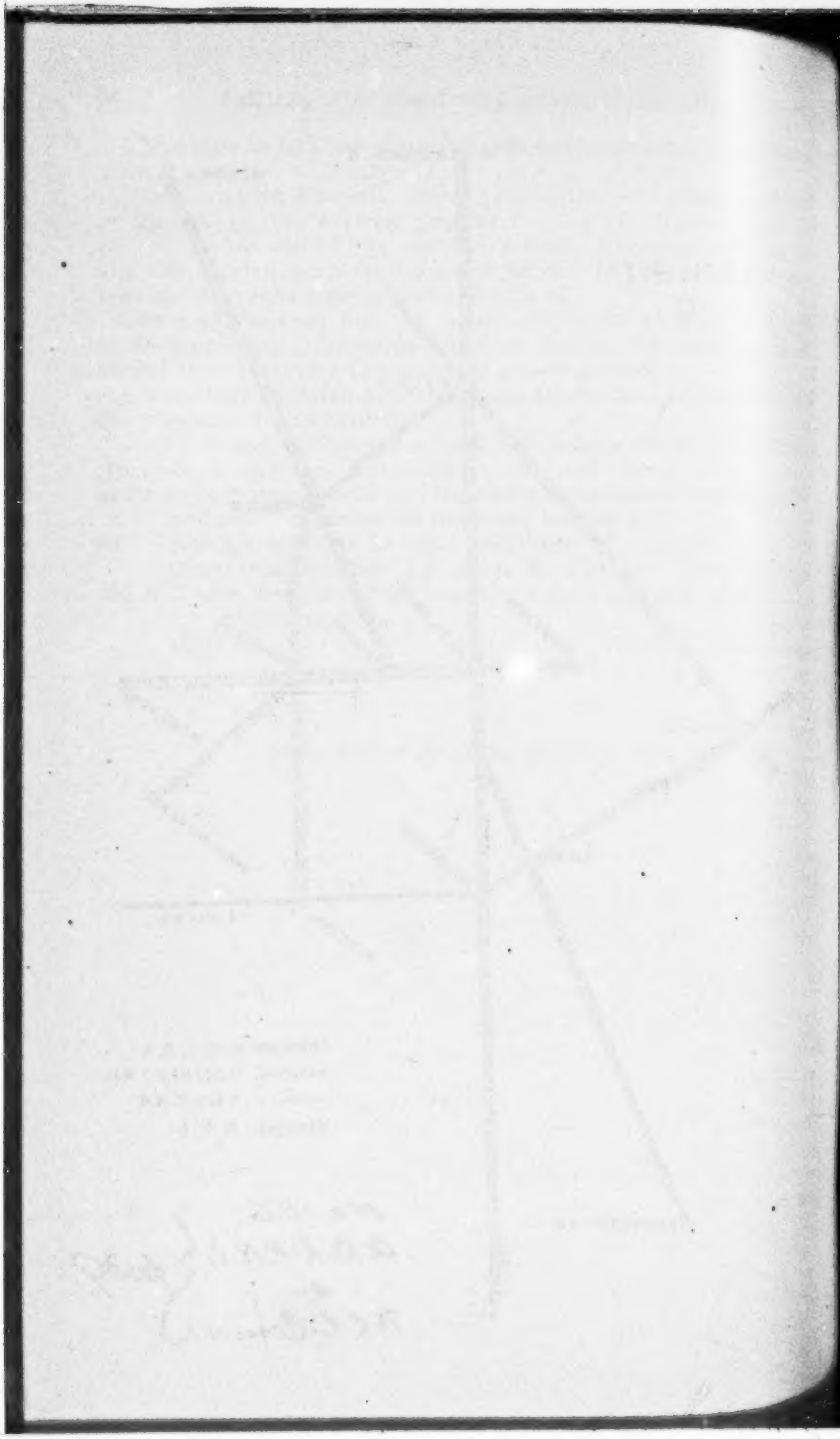

North Carolina Corporation Commission.

RALEIGH, N. C., February 2, 1904.

In the Matter of Selma Connection.

Hearing on Exceptions of Atlantic Coast Line Railroad Company.

The Atlantic Coast Line Railroad Company is represented by Junius Davis and Jas. H. Pou, attorneys.

H. M. Emerson, traffic manager, and W. N. Royall, general superintendent, Atlantic Coast Line Railroad Company, are sworn and examined.

W. N. ROYALL testifies as follows:

Direct examination by Chairman MCNEILL:

Q. Mr. Royall, the first exception states that the class of engines which is used by the company upon these branches, meaning the Plymouth branch and the Nashville branch, is too light and not of sufficient power and capacity to make the schedule which the order of the commission required to be made between Rocky Mount and Selma. Could you not use a heavier engine on one or the other of these branches?

A. Well, sir, our heavier engines are all coal-burners, and we are provided on these branches for using wood.

Q. Could you not use coal, however?

A. Well, that means that we would have to make special provisions for it on the branch lines. We would have to establish coal stations; and if we use the same size engine, it would have to be changed from a wood-burner to a coal-burner.

Q. What expense would be involved in that?

A. Well, we would have to establish a coal chute on the
41 branch lines to supply the engines with coal, and that means an expense of considerably over $3,000.

Q. Now, Mr. Royall, we will take one branch at the time. First, let us take the Nashville branch. What additional expense would you be put to to provide yourselves with coal-burners?

A. I do not think it would be necessary on the Nashville branch to provide a coal station at the end of the road, but it would be necessary on that branch, if we put a larger engine on it, to put heavier rails. We are running as large an engine as the rail will permit us to run.

Q. How about the Plymouth branch?

A. Well, on the Plymouth branch it would be necessary for us to provide coaling stations if we put coal-burners on that road. The rail would be large enough to bear an 18-inch engine.

Mr. POU: Do you mean the whole distance, Mr. Royall, or a part of it?

A. Well, a part of it is light and a part heavy rail.

Chairman McNeill: What do you say would be the expense of providing yourselves with the coal chute on that line for running a coal engine?

A. I think you could provide a coal chute for an amount somewhere in the neighborhood of $3,500. It would depend, of course, on the kind of chute. We have completed chutes which cost us about $5,000. That was at Manchester, where we needed a larger chute than we would on the Plymouth branch.

Q. What size rail have you on the Nashville branch?

A. I can not be positive, but it is my impression that it is a 45-pound rail.

Mr. Davis: It is a 45-pound rail.

Q. On the Plymouth branch?

A. From Rocky Mount to the 45¼ mile post is 56-pound rail; from 45¼ mile post to Plymouth, it is 50-pound rail.

Q. What is the size of your rail on the Norfolk and Carolina road?

A. That is 70-pound rail.

Q. From Parmele to Washington?

A. That is a small rail. It is either a 50- or 56-pound rail.

42 Q. From Weldon to Kinston?

A. It is 50- or 56-pound rail.

Q. From Rocky Mount to Wilmington?

A. That is 56-pound rail.

Q. What size rail have you on the Wilmington, Columbia and Augusta road?

A. That has 56-pound rail between Wilmington and Pee Dee; 70-pound rail from Pee Dee to Sumter; and it is mixed between Sumter and Columbia—I can not say how much of it is 60-pound rail and how much 70-pound rail. There is a good deal of 56-pound rail in that piece of the road.

Q. Do you say that there would be any trouble in running a heavier, that is a coal-burning, engine on the Nashville branch on account of the size of the rail?

A. Yes, sir, on account of the light rail. All of our coal-burning engines are heavier than the engines we run on that road.

Commissioner Beddingfield: What would it cost to change the wood-burner into a coal-burner?

A. I would not like to answer that positively, but somewhere in the neighborhood of three or four hundred dollars.

Chairman McNeill: You would not have to make any change except as to the engine?

A. In changing from wood-burner to coal-burner, that is all that would be to change. We would make the engine so as to burn coal instead of wood.

Q. That would not make it any heavier?

A. No, sir.

Q. So if you would change them, at the expense of three or four

hundred dollars you could convert a wood-burning engine into a coal-burning engine?

A. Yes, sir.

Q. And then you could make the trip from Rocky Mount to Selma?

A. That would not increase the power of the engine. It would still be a small engine and not powerful enough to make a faster schedule, and the schedule as fixed by the commission. As I understand, the commission made the schedule for us to run from Rocky Mount to Selma——

Q. An hour and twenty-five minutes.

43 A. Yes, sir; from leaving time at Rocky Mount to arriving time at Selma is an hour and twenty-five minutes.

Q. Yes, and fifteen minutes at Selma that the Southern train waits there for you—that would make an hour and forty minutes.

A. Those are the figures as you put them down, but you do not allow anything for the stops or the meeting of any superior trains. We have to make seven stops and meet two superior trains which have the right-of-way, and that means for us to switch out for them.

Q. You have seven stops and meet two superior class of trains. How much time does that take?

A. There is a loss of twenty-one minutes, I should say, for the stops. It generally takes three minutes for a stop—I never knew a train to get away from Wilson under three minutes. Then the meeting of the two superior class of trains means a loss of five minutes for each train, or ten minutes for the two trains—that would be thirty-one minutes off of the running time. That is thirty miles an hour.

Q. How is that, Mr. Royall?

A. I was working it from the leaving time at Rocky Mount to its arriving time at Selma. Take thirty minutes from one hour and twenty-five minutes——

Q. But you add the fifteen minutes to the hour and twenty-five minutes.

A. Well, taking the thirty minutes from an hour and forty minutes, and that is an hour and ten minutes running forty-two miles. The engine could not possibly do that if it is a coal-burner—with three cars, I do not think they could make it.

Q. Could the other engine do it with the same equipment?

A. It would be a very difficult thing for one of our 18-inch engines to make that schedule—one hour and ten minutes for forty-two miles. When they stop it is a hard job to get them running again at the regular speed, and they lose considerable time. Where you have seven stops to make, it takes some time to get back and recover the speed that you were making.

Q. Would this proposed train be a heavier train than the

44 one you haul from Plymouth or Washington?

A. I do not know about that. I do not suppose it would

be; but it would depend altogether upon what kind of cars you would have to put into that service on the train from Rocky Mount to Selma.

Mr. DAVIS: And, Mr. Royall, that is upon the assumption that you could leave Selma at 10.50 o'clock?

Chairman MCNEILL: At 1 o'clock.

Mr. BEDDINGFIELD: What rate of speed does the other train make, Mr. Royal?

A. I think they have thirty-five minutes for sixty-five miles. About twenty-five miles an hour.

Q. That includes stops and everything? Now, you take out the stops, would it make thirty miles between the stations?

A. I expect they have to run thirty miles an hour to make the schedule. So, if you take forty-two miles and an hour and ten minutes to make it, with the stops and the meeting of two other trains, that train would have to run forty-five to fifty miles an hour to make the schedule.

Commissioner ROGERS: You have already deducted twenty-one minutes for stops.

A. Well, we have only an hour and ten minutes after taking out the stops. With those stops and getting under headway again, we have to run as high rate of speed as forty-five, forty-eight and fifty miles an hour to make it and reach Selma by the time the commission has fixed.

Chairman MCNEILL: You have a good rail and a straight track from Rocky Mount to Selma?

A. Yes, sir; it is a pretty good road.

Mr. ROGERS: What is the highest speed you make with any train over that road?

A. Well, I do not know. Some of our fast through trains get to fifty-five or sixty miles an hour.

Chairman MCNEILL: How about your No. 39—is that a fast train?

A. No. 39, with the stops it has to make, I do not think it could reach higher than forty-five or forty-eight miles an hour. There are from nine to ten cars on that train—about ten, I reckon.

45 Q. What additional expense, Mr. Royall, would it be to run this Plymouth train to Selma from Rocky Mount, in addition to adding the coal chute? You say that would cost about $3,500?

A. I have not calculated that at all, Mr. McNeill, for the reason that we did not see how it was possible to use that same train and same crew, and an additional train would have to be added.

Q. You mean that you could not use any part of that crew?

A. We could not maintain the schedules we have in the East.

Q. Which schedule in the East do you mean?

A. I mean the returning train, we have to make the connection that we have in eastern Carolina.

Q. At what point?

A. At Parmele and for Washington.

Q. Now, Mr. Royall, in your second exception, you say that to

put on a special train between these points would require an additional expense of $65.00 a day. Please itemize that for us.

A. We put down the engine at $10.00 a day. That is the price we would have to pay for an engine if we were to hire it, and that is the price we would get for one a day if we were to lend it out. The same for the cars—baggage car and two coaches, $5.00 each, would be $15.00. Wages of an engineman would be $3.25 a day; fireman, $1.25 a day; conductor, $2.00; baggage master, $1.67; flagman, $1.40; porter, $1.08; fuel and water would be about $15.00 a day; train supplies would be $1.00 a day. That does not include the wear and tear on the train or track nor any superintendent of the train in the way of inspection, and several other little items that should be brought in and that ought to be charged in this thing, and we put it $65.00 a day. I do not reckon the figures will add exactly $65.00, but it will be somewhere in the neighborhood.

Q. What does the Nashville Branch train cost your company a day?

A. I do not know, but something less than $65.00.

Q. Can't you itemize that for us?

A. I have not the figures of all these branch lines, but if
46 that train was put on the main line, it would have to be manned in the same way. If a main-line train, the expense would be just as great.

Q. One engineer could make this run from Spring Hope to Selma, couldn't he?

A. I don't know, sir; I have never figured on that. My figuring and figures were on the Plymouth Branch train.

Q. Well, I will ask you the question, if one engineer could not make that run?

A. I suppose he could.

Q. You would not have any additional expense if you use the same engine then, would you?

A. Yes, sir; we would have to put another man then on for the reason that all of the switching service that is done at North Rocky Mount is done by that man on that engine, and he also does the switching at Spring Hope; and if we run the train through, we would have to put another man on or another man at these points to do the work.

Q. But it would be nothing like $3.00 a day, would it? I mean the service between Spring Hope and Selma—could you not have one engineer to do that service for $3.00?

A. Yes, we could have a man at that price, but we would have to put a man on at Rocky Mount to do the switching, and that would cost $2.75 a day.

Q. How about the rest of the crew?

A. We would have to provide the rest of the crew to take the place of the others.

Q. Mr. Royall, you mean you use the conductor on that train for your switching at Rocky Mount?

A. Yes, sir.

Q. Now, what other officers?

A. Flagman, fireman and baggage-master and the porter.

Q. Do you use them in switching?

A. Probably not the baggage-master. We use the rest.

Q. And you say you would have to employ these others, any how?

A. If we use this train for any other purpose.

Q. You can equip a train from Spring Hope to Selma with an engineer for $3.00 a day, or just the figures you have there—$3.25, I believe you say it is?

A. Yes, that is right.

Q. Now, your conductor?

A. Conductor, $2.00 a day.

47 Q. He could do the same service?

A. Yes, sir.

Q. And all the others—the baggage-master and flagman and the porter—they would not add anything to the expense if you used the same crew?

A. It would mean the expense of putting men in their places.

Q. At Rocky Mount to do the switching?

A. Yes, sir; and at Spring Hope.

Mr. ROGERS: There would be no coal chute in that?

A. No, sir; it would not be necessary.

Chairman MCNEILL: Now, take the Plymouth branch. You can use the same conductor there and all of the crew, except the engineer, can't you?

A. You mean to make the round trip of the Plymouth Branch train—to Selma and back to Plymouth?

Q. Yes, sir.

A. I will have to get my schedule. Well, that would be a little longer run for a crew in a day than I know of.

Q. How much longer would that be?

A. That would be a 232-mile run.

Q. How do you make that?

A. Well, 53 miles from Plymouth to Tarboro, etc.

Q. We find it only 222 miles.

(After calculating the distance, they find it to be 222 miles.)

A. Well, it would be 222 miles a day. It is a pretty long run on the road for a man to double in a day—from Plymouth to Selma and return. That is longer than any run we have.

Q. How far is it from Wilmington to Norfolk?

A. Let me see. From Contentnea to Wilmington, 104 miles——

Mr. EMERSON: It is 240 miles.

Q. So that is a longer run than this would be. Does not one crew make this?

A. Yes, sir; but the engineer does not. The engine changes at Rocky Mount or South Rocky Mount.

Q. One crew makes the trip between Wilmington and Norfolk except the engine?

A. Yes, sir.

48 Q. Don't you make a run from Smithfield to Richmond, Va.?

A. Yes, sir.

Q. Does one crew make that?

A. Yes, sir.

Q. How far is that?

Mr. EMERSON: It is 83 miles from Richmond to Weldon; 47 miles—it is 163 miles.

Q. So you make that entire trip?

A. Only every other day.

Q. That is 326 miles?

A. Yes, sir; but that is a pretty long run and the crew lays off the next day and they do not run on Sunday. There are two crews for that run. They have a day to rest before going back.

Q. There is one crew on the other?

A. Yes, and that is a run that you have to double every day or keep a crew at Smithfield for the purpose of going back.

Mr. ROGERS: It would be harder on the crew to work that train than between Selma and Rocky Mount.

A. Hard in what way?

Q. There are more passengers, more express, more cars and everything, are there not?

A. That would be hard to tell. I do not know what that train is composed of. I should say that the work would be very much the same.

Chairman MCNEILL: Do I understand you to say that the crew from Wilmington to Norfolk—that is the same crew? The run through, all except the enginemen?

A. They leave Wilmington in the morning and go to Norfolk and lay over and go back to Wilmington the next day and then lay over a day and come back on a different class of train—the entire crew.

Mr. BEDDINGFIELD: That does not include the engineer?

A. The engineer only runs between Wilmington and South Rocky Mount? The fireman and engineer both stop off—that is the engine crew stops over.

Mr. EMERSON: I do not know, Mr. Royall, that the chair-

49 man fully understands that the crew does not make that 240 miles every day.

Mr. MCNEILL: Yes, I understand that. So you say it would be practicable to use the same crew on the Nashville branch but you think on the Plymouth branch you would have to have an additional crew?

A. If you run the train through to Selma, we would have to put another crew in the run. I think it would be necessary.

Mr. ROGERS: You mean an engine crew or a full crew?

A. An engine and entire crew. The run would be so long and

such steady work every day for one crew, that we would have to have another crew.

Q. How much would a crew cost you? You would have the train already equipped. You might take off what the engine cost you and take off those other items about the cars.

A. The same thing would apply to the engine crew as well as the train crew.

Chairman McNeill: Just assuming that you have to have another crew—take off the expense of the train.

A. Just put one train in the service?

Q. That is practicable, is it not?

A. It would be a hard run for those cars. It would be right hard to figure on just keeping one train in the service. Wherever we have a run as heavy as that, we generally have two trains. That is they do not get the attention unless they have a lay over at one place or the other. A train that is run as regularly as that would be, would have to be relieved sometime so as to get the necessary attention at the shops. If we undertake to make it with one train, we would have to have another train to replace it.

Q. Do you have to do that with every train you have?

A. No, sir; some trains on our branch lines we do not do that with.

50 Q. But you do that with the Wilmington to Norfolk and Norfolk back to Wilmington—you do that with that train because that is a long run?

A. Yes, sir.

Q. And with the other trains—you have to repair them?

A. Yes, sir.

Mr. Beddingfield: How long would this train, under this order lie over in Rocky Mount before it went on to Selma?

A. I understand it is to leave there at 1 o'clock.

Q. Yes, sir.

A. Well, it would lie over at South Rocky Mount from 10:35 to 1 o'clock.

Q. Would that not be ample time for any inspection of the cars necessary?

A. Unless some extraordinary repairs had to be made, such as putting in a pair of wheels or something like that. We could not do that hardly within that time.

Chairman McNeill: Then you have all night at Plymouth—it spends the night there, I understand. It gets there about 7 or 8 o'clock at night and leaves in the morning at 7 o'clock?

A. Yes, but we have no shops there to do that work.

Q. This exception sets forth what appears from the auditor's record of the compiled average of passengers on No. 39. What record does the auditor keep that shows the number of passengers carried on that train between these stations—Rocky Mount and Selma?

A. I do not know much about the accounts. Mr. Emerson can tell you more about that than I can.

Q. So you do not know how full or accurate it is?

A. I know, having once been a conductor, that it is made up from the conductor's report to the auditor.

Q. He reports the number of passengers, and does he report between the stations?

A. The conductor does that also. He reports where a passenger gets on and the station where he gets off.

51 Q. That would not give the mileage books?

A. Yes, sir; the conductors report that.

Q. But the ticket agent would not do that?

A. The conductor's report would check against the ticket agent's report who sold the mileage book.

Mr. POU: Would not the stub torn off the mileage book show what station it was sold from?

A. I cannot say that.

Mr. EMERSON: Mr. Chairman, if you please I might give you some information as to that if you care to know it now.

Mr. MCNEILL: Well, we will just pass that over now.

—. Mr. Royall, do you know whether tickets are sold from all points on the line of your road to all points on the lines of the Southern road?

A. I do not, sir.

Q. Can you tell us whether tickets are sold from Plymouth—say to Clayton?

A. I can not.

Q. Or Burlington?

A. I do not know.

Q. You do not know that then?

A. No, sir.

Q. It is claimed in exception 5 that the Atlantic Coast Line Company affords "ample and sufficient accommodations for passengers from the East to Selma and to points on the Southern railway, and it does this in the following ways:

The train from Rocky Mount, south-bound, in the early morning makes a close connection at Goldsboro at 6:50 o'clock with the Southern for Raleigh and all points west." What territory would that train serve?

A. It would serve Rocky Mount, Wilson and all through that section, and it would serve any passenger who had come down from Weldon or around the night before on some branch.

Q. So then it would only serve such passengers as are at Rocky Mount and intermediate points between there and Goldsboro,

52 and such passengers as who come the night before to Rocky Mount on some of your branches?

A. Yes, sir.

Q. You have no trains coming into Rocky Mount except the day before from eastern Carolina?

A. Our train No. 103 that leaves Norfolk at 4 o'clock in the evening comes to Rocky Mount and on to Goldsboro and makes connection there with a train that leaves there in the evening. We have that train in the evening.

Q. But I am speaking about morning trains now, not the evening train. You have no train from eastern Carolina that makes connection with that morning train on the same day. They have to go to Rocky Mount the night before and spend the night there?

A. No, not in the morning. Well, from what point?

Q. From any point.

A. None, except the connection made from all points north and brought to Rocky Mount and a sleeper is given to the train that leaves in the morning.

Q. So then that is the service. If a man from eastern Carolina wanted to get a ticket on that train, he must come the evening before, spend the night and start in the early morning for Raleigh or any point west?

A. Yes, unless they go to Goldsboro on train No. 103 that makes close connection there. There is no direct connection.

Q. What time would he have to leave his home to make that connection—say a man from Plymouth or any intermediate point to get to Goldsboro at 6:50 in the morning by your train? Under the present schedule what time would he leave home in order to get to Raleigh and points west, to come that way?

A. Under the present schedule, what time would he have to leave?

Q. Yes, sir.

A. Why, there is no train, after No. 103 train, which leaves Norfolk at 4 o'clock in the evening.

Q. But I am not talking about Norfolk—I am talking about Plymouth now.

A. None, except the day before train.

53 Q. What time would he leave Plymouth the day before?

A. Let me see—the train is due Rocky Mount about 10 o'clock—he would leave about 7 o'clock in the morning.

Q. He would leave there at 7 o'clock in the morning?

A. I will give you the exact time—it is 7:20 in the morning.

Q. Well, in order to get there, he must leave the day before and in the morning at that. It takes about twenty-four hours to get from Plymouth to Goldsboro on that train. Now, for a passenger living in Plymouth, it would take him twenty-four hours to get to the Southern railway or any point on the Southern railway, would it not?

A. Yes, sir; according to that schedule, it would.

Q. That is right—that is the schedule, is it not? He leaves Plymouth at 7:20 in the morning of one day?

A. That is right.

Q. How about Washington?
A. It is very much the same, I think.
Q. Exactly the same, is it not?
A. Yes, sir; it would be the same thing—on the same train.
Q. How about Kinston and all intermediate points there?
A. They would have better connection from Kinston—but you mean coming from towards Kinston to Rocky Mount?
Q. Yes, sir.
A. It would be the same connection.
Q. In order to reach that 6:50 train at Goldsboro in the morning by your connection, they would leave home twenty-four hours before, wouldn't they?
A. Yes, sir; if you come by Rocky Mount.
Q. How about Nashville?
A. Nashville would be the same way. Well, there would be a little later train—you could leave there in the afternoon but you would spend the night at Rocky Mount in order to reach Goldsboro at 6:50 in the morning.
Q. How about Norfolk and Suffolk and all intermediate points there?
A. They have a close connection from there—our evening train.
54 Q. But I am talking about the morning train now.
A. Well, it will be the same way.
Q. You have to spend the night?
A. Yes, sir.
Q. The morning train does not connect with any of your eastern branches?
A. No, sir.
Q. In leaving Rocky Mount, you would leave at 5 o'clock in the morning, wouldn't you, Mr. Royall?
A. Yes, sir; the train arrives at Goldsboro 6:48—it leaves Rocky Mount at 6:40 o'clock in the morning.
Q. Now, then, suppose you start out from Goldsboro at 6:50 o'clock in the morning. You leave Plymouth, Washington, Kinston, Nashville and Norfolk and all of those points, and you want to make this train at Goldsboro. You spend the night at Rocky Mount—come to Goldsboro on the early morning and take that 6:50 train. Now, Mr. Royall, what train does that train connect with at Greensboro?
A. The one that leaves Goldsboro in the evening?
A. No, the one that leaves Goldsboro in the morning—that 6:50 o'clock train? Is it not a fact that it does not connect with any through train? It arrives there at 12 o'clock and fails to connect with any through train—it connects only with a local train to Charlotte and one to Winston?
A. I really do not know, Mr. McNeill; I am not familiar with the southern connections.
Q. You also say in this exception that you have two trains—one from Norfolk and one from Richmond—that makes close connection

at Goldsboro and Selma with the night train on the Southern for Raleigh and all points west. That is the second train mentioned in this exception?

A. Yes, sir; that is right.

Q. I want to see what facilities that affords travelers from the East?

A. That train that leaves Norfolk at 4 o'clock in the evening makes connection with the Southern at Selma and Goldsboro.

55 Q. That furnishes direct connection to Selma and Goldsboro both?

A. Yes, sir.

Q. How about Plymouth and Washington and Kinston?

A. There is no connection.

Q. Then, in order to get the advantage, from Washington, Plymouth or Kinston, of that connection, when would they have to leave home?

A. If they wanted to strike that train they would leave there on the morning train.

Q. They would have to leave home twelve hours before?

A. Now, hold on—let us see about that—that is train No. 103, I think. That train leaves Norfolk about 4:20 in the evening and is due at Rocky Mount at 7:59 p. m. and at Goldsboro at 9:25 p. m., and there connects with the Southern road. Now, you want to know is there any connection from Plymouth or Washington, or Kinston with that train?

Q. Yes, sir.

A. No, sir; in order to make that connection on the Kinston branch, you would have to leave at 7:30 in the morning.

Q. So you would leave those places early in the morning so as to get the benefit of that night schedule with your train from Norfolk or from Richmond?

A. But the Kinston branch train returning would reach Kinston at 6:45 p. m. and there is connection with the Atlantic and North Carolina railroad.

Q. Yes, sir; but I was talking about them as they come. Now, that is your Norfolk and Richmond train, and it fails to make connection with either of the Plymouth, Washington and Kinston trains. It does connect closely with the Norfolk and Nashville and Weldon trains?

A. Yes, sir.

Q. Now, Mr. Royall, what does it connect with at Selma—what sort of train?

A. You mean at Goldsboro?

Q. I mean the evening train.

A. It does not connect at Selma—it connects at Goldsboro. I do not know what you call it. I came up on it last night. It is a mixed train, I suppose.

56 Q. It is mainly a freight train, isn't it?

A. They had on freight cars last night.

Q. Do you know how long it takes to run from Goldsboro to Greensboro?

A. No, sir; I do not know. I am not familiar with the Southern's schedule.

Q. You do not know that it takes from 9:40 o'clock at night until 6 o'clock in the morning to get to Greensboro?

A. No, sir; as I said, I am not familiar with their schedule.

Q. So this connection that you claim is made with the Southern for Raleigh and points west, by these two trains that connect at Selma with this train that carries freight cars, passenger cars, etc.; is that train of the Southern that you connect with at Selma, is it not what you call an accommodation train?

A. I should judge so.

Q. Now, you say the train from Weldon to Kinston makes close connection at Kinston with the Atlantic and North Carolina train for Goldsboro, which train in turn makes close connection with the Southern at Goldsboro at 9:40 p. m. for Raleigh and all points west. Now, Mr. Royall, that train serves a very limited territory, doesn't it?

A. That is the same train our train coming from the other way connects with at Goldsboro.

Q. But that serves a limited territory?

A. It serves all of the points between Norfolk and Goldsboro and all points on the Kinston branch.

Q. But I am talking about the Weldon and Kinston train, Mr. Royall. That train would only serve the territory east of Parmele—between Parmele and Kinston, would it not?

A. It would serve the purpose of any passenger from between Pender to Kinston.

Q. But you have no connection from Washington to Plymouth?

A. But those passengers could come on the train from Norfolk.

57 Q. Your train No. 39, from Washington to Jacksonville, you say, is due at Selma at 2:50 p. m., and the accommodation train, No. 183, on the Southern, from Selma to Raleigh and all points west, is scheduled to leave Selma at 3:25 p. m. Do you know anything about that accommodation train, No. 183?

A. No, sir.

Q. Your train, No. 39, has not been on time very often in the past year—that is to say it has not been at Selma at 2:50 p. m., has it?

A. I has been very irregular.

Q. Now, Mr. Royall, you say that train No. 102 leaves Goldsboro for Norfolk at 7:30 a. m., and makes close connection at Hobgood with train No. 58, the train from Kinston to Weldon, and there with the Seaboard train for Raleigh and points west. Now, that is a connection, a sure connection, for how many points on the Southern road?

A. On the Southern road?

Q. Yes, sir.

A. Well, that says the Seaboard Air Line connection.

Q. This exception claims that your connection at Weldon and by the Seaboard Air Line furnishes adequate facilities from the eastern part of the State for Raleigh and points west. Now, I want to see what facilities it furnishes and to what points. It is a sure connection for Raleigh, is it not?

A. Yes, sir; but I do not know what connections the Southern and Seaboard have at this point.

Q. You do not know about the connection of the Southern and Seaboard here then? They miss the connection. One, the Seaboard Air Line, is due here at 3:50 o'clock and the Southern is due at 3:25 o'clock. And it has connection to Durham?

A. Yes, sir.

Q. Well, that connection at Durham depends upon the Seaboard Air Line's through train that leaves Washington at 3:30 in the morning, does it not?

A. I have not taken that up. Mr. Borden probably has gone into all of this and he is thoroughly familiar with it.

58 Q. But I will ask you if that connection at Durham with the Southern is not often missed? What would you say about that for furnishing transportation for passengers from the eastern part of the State to points beyond Durham?

A. I do not know anything about their connections and accommodations at all, Mr. McNeill.

Q. But this through train from Washington connects with that Seaboard Air Line train at Henderson that runs down to Durham—this would not be a very safe connection, would it?

A. I really do not know what to say—I do not know what connection they have or how long that they can wait for this train.

Q. They cannot wait very long. The Southern has to make its own connections and cannot wait more than ten or fifteen minutes. Now, if there is no connection at Raleigh and none at Durham by the Seaboard Air Line railway, what connection would you have and what facilities would you have for the people going to the western part of the State?

A. Well, if they were not taken care of at Raleigh, it would be pretty poor.

Q. Well, they would miss connection here at Raleigh, and it would be uncertain whether they made connection at Durham with the Southern for points west. The connection depends upon a through road or train and a margin of ten minutes. Now, would you say that is a sure connection?

A. I really do not know.

Q. But judging by your former connection at Selma, would you call it a sure connection?

A. I guess not—if you had just a short time to wait and the other train is apt to be behind.

Q. Well, it is the same thing at Durham. They depend on a through train and have a marginal wait of ten minutes.

A. Well, I do not see anything else but that.

Q. Now, then, you claim here in these exceptions that "there are few places in the territory served by this company from which
59 a passenger cannot reach Raleigh and other points on the Southern and Seaboard railroad by either one of two different roads on the same day." Now, Mr. Royall, take a passenger at Plymouth. How are you going to put him beyond Raleigh on the same day? How is he going to reach Burlington, we will say, on the same day?

A. If there is no connection beyond Raleigh, I do not know how he would do it.

Q. Then you cannot sustain this exception?

A. I have not looked into this exception at all, Mr. McNeill.

Q. But you say here "Particular attention is given herein to the connection over the Southern. Equally good connections, both going and returning, are made at Weldon with the Seaboard for Raleigh and other points west. There are few places in the territory served by this company from which a passenger cannot reach Raleigh and other points on the Southern and Seaboard railroad by either one of two different trains on the same day." Now, I want to know how a passenger from Plymouth would reach Burlington the same day? You know Burlington is an important station on the Southern road?

A. Mr. Borden was familiar with that and he worked it out, but I am not familiar with it. I am sure he could tell you about that.

Q. But how would a passenger start to leave Plymouth—what time would he leave Plymouth?

A. Somewhere about 7 o'clock in the morning.

Q. Well, trace him up. How far would he get—how would he go? If he goes via Selma—say, he would come to Rocky Mount in the morning and there wait for the evening train for Goldsboro. But that train from Goldsboro, via Selma, does not get to Raleigh until 11:45 at night, so he could not get to Burlington then in the same day, could he?

A. Not if that is the schedule, and I suppose it is.

Q. Now, suppose he should take the morning train from
60 Goldsboro. He would leave home in the morning and spend the night at Rocky Mount or Goldsboro, and then go on the next day to Burlington. Would that not be so? He would not get there in one day, would he?

A. But I understand that Southern train leaving Goldsboro at night does not go through to Burlington.

Q. It goes on through to Burlington but not the same day. It is five o'clock next morning when the passenger gets there. The only way then would be by the Seaboard Air Line and that would depend on the connection at Durham, would it not?

A. Now, I am not positive about the Southern schedule and I do not know. I do not keep posted about its schedule.

Q. Take a man from Washington and the intermediate points between Washington and Parmele. Is it not the same thing about

Washington, and all of those points except Rocky Mount and Wilmington?

Mr. Pou: No, you can make it from Washington.

Q. Well let us see how you can make it.

A. He can leave Washington at 8 o'clock in the morning and get to Parmele at 9 o'clock a. m.; and he can leave Washington again at 4 o'clock p. m. and get to Parmele at 5 o'clock p. m. Those are both passenger trains—and get to Raleigh and any intermediate point between Goldsboro and Raleigh.

Mr. Pou: One way by the Seaboard Air Line and the other by the Atlantic and North Carolina railroad.

Q. In either event he would not get there in the same day.

A. He would get to Raleigh the same day.

Q. But I am talking about going to Burlington beyond Raleigh. He would get to Raleigh but not to any point beyond Raleigh in the same day.

A. It is as I have stated, Mr. McNeill, I am not familiar with the schedule of the Southern and do not know.

61 Q. Now, Mr. Royall, if you make connection with this train that passes Selma at 2:25 o'clock on the Southern road, I will ask you if it would not be altogether possible for the eastern part of the State, that is served by your branches, to reach any point on that road to Greensboro and any point west on the same day—leaving home in the morning and reaching these points in the same day? Now, this is a passenger train that leaves Goldsboro about 1 or 2 o'clock.

A. If it is a through passenger train, I suppose they could, but I do not know anything about it. I am not familiar with the Southern schedule.

Q. That would put you in direct connection with any point on the Southern railway, not only Raleigh, Durham, Greensboro, Charlotte, Salisbury and Asheville, but farther west, would it not? But you say you are not familiar with the schedule?

A. No, sir; I am not. I thought our No. 39 connects at Selma with this Southern train No. 183, giving them direct connection.

Q. But the Southern No. 183 train is an accommodation train, is it not?

A. I did not notice—they have it down on the schedule, and I did not know whether passenger train or mixed train or what it was. I just supposed it was the train to make the connection.

Q. But, Mr. Royall, if that train had made the connection there would not have been any of this question about the connection at Selma.

Cross-examination by Mr. DAVIS:

Q. Mr. Royall, suppose the run of that Plymouth train was extended to Selma from Rocky Mount. I think you figured it out that it would consume at least forty odd minutes and give somewhere in

the neighborhood of an hour to make that schedule. Suppose it did make the schedule according to the requirement of the commission and reach Selma at 2:25 or 2:35 o'clock, in time to make the connection with the Southern, what time would that train reach
62 Rocky Mount on the return trip? How long would it have to remain at Selma before it could return?

A. They could not turn around and get away until after the arrival of No. 39.

Q. How long would that delay it?

A. No. 39 train is due at 2:50. It would not leave there before about 3:00 o'clock—it would stand there until the train did its station work.

Q. It would not get back, under the same schedule, to Rocky Mount and be able to leave there until when?

A. About 4:25 or 4:30 o'clock.

Q. What time is the train now scheduled to leave there?

A. 3:55 p. m.

Q. That train makes connection at Parmele with the train for Washington and the train for Kinston also, does it not?

A. Yes, sir.

Q. That would delay then two trains the same length of time?

A. Yes, sir.

Q. That is about the closest connection that could be made, is it not? I mean figuring the schedule as fast as put here. You could not get there earlier than 4:30 o'clock?

A. It would be a pretty fast schedule.

Q. I understand you to say that the train on the Scotland Neck branch, that is the Plymouth train, makes connection at Kinston with the Atlantic and North Carolina train, which connects at Goldsboro with the Southern for Raleigh?

A. Yes, sir.

Q. And that would endanger that connection, would it not?

A. Yes, sir.

Q. The commission asked you if there was any way by which a passenger leaving Plymouth at 7 o'clock in the morning could reach Burlington on the same day. I will ask you if he could not come up to Parmele, take the Scotland Neck branch for Weldon, connect there with the Seaboard Air train, and get into Burlington the same day?

A. I have not the Seaboard Air Line connection here with me.

63 Q. Well, I can get that information from Mr. Emerson. Now, do you know, Mr. Royall, what the Atlantic Coast Line estimates as the average cost per mile of the trains that they run. What is the estimated cost per mile of their revenue trains?

A. I think it is $1.02 per mile.

Q. That is the standard amount that experience has taught them is the average expense of running a train per mile?

A. Yes, sir.

Q. In regard to the equipment—the difference in the equipment on the Nashville branch and the Plymouth branch—I understood you to say that the engine on the main line, that is to say from Richmond or Weldon to Selma or to Wilmington—those are coal-burning engines—and the engines you use upon the Nashville and Plymouth branches are wood burners?

A. Yes, sir.

Q. Mr. McNeill asked you as to the expense of changing the engines. That expense would not be as to one engine only, would it, in order to maintain an engine of sufficient capacity to make this run?

A. We would probably have to change two or more.

Q. And then I understood you to say that would not give the lighter engines the capacity and strength to run a train at that speed?

A. I am sure not.

Q. The engines you have are of sufficient strength to perform the work on those branches?

A. Yes, sir.

Q. I understood you, further, to say that that Nashville engine and engine crew and the crew of the train, except perhaps the baggage master, while laying over at Rocky Mount, were engaged in work there?

A. Yes, sir.

Q. And that would simply amount to working a new crew any way?

A. We would have to put another engine there to do that work and get other men.

Q. So it means simply an additional train crew?

A. Yes, sir; that is right.

64 Redirect examination by Chairman McNeill:

—. Mr. Royall, you say the average expense of running a train per mile is $1.02?

A. That is all of the revenue trains.

Q. That includes heavy trains—passengers and freight? Now, what does it cost to run the Nashville branch train per mile?

A. I do not know. I do not suppose it costs as much as the heaviest trains.

Q. Then, it would not cost $1.02 per mile?

A. No, sir.

Mr. Davis: We do not contend that.

Q. That is what we thought. Do you know what it would be if you were to extend that run? What would that be a mile?

A. I should say a reasonable estimate on that—I can not come any closer than an estimate—would be somewhere in the neighborhood of eighty or eighty-five cents a mile.

Mr. ROGERS: That is for that forty miles?
A. Yes, sir.

Mr. EMERSON: It would be for eighty-two miles—you see we have to go back to Rocky Mount all in the same run.
Chairman MCNEILL: Just the double, I suppose. Now, let us see how you figure that out. Suppose you do not put on a new train—keep the same cars and put on another crew. It would divide the expense by half, would it not?
A. It would be the same thing.
Q. You mean the same thing to fix a special train and to use the same train?
A. I reckon it would be a little more expense if you have an additional train. Is that what you mean?
Q. Yes, sir, that is the question.

H. M. EMERSON testifies as follows:

Direct examination by Mr. POU:

Q. Mr. Emerson, this is a subject of enquiry as to the facilities afforded for persons on your line, in eastern North Carolina, to reach Raleigh and points on the Southern and Seaboard Air Line
65 west of Raleigh. We wish you would take up these points successively and explain to the commission the facilities for leaving Plymouth and all points on your lines for Raleigh and places west of Raleigh?
A. I will take from Plymouth, N. C. Leaving there at 7:20 a. m., you connect at Parmele with the Kinston branch train, arriving at Weldon at 11:10 a. m.
Q. Now, at Parmele is there ever any doubt about making that connection? The trains always wait?
A. There is practically no doubt about that connection. That train also serves the territory between Kinston and Weldon. There is a train leaving Washington, N. C., at 8:00 a. m., which also connects with the Kinston branch train at Parmele. Those trains enable passengers to leave from any point on our line—Plymouth, Washington, Kinston and intermediate points as to Weldon, N. C., and includes our entire eastern Carolina section, with the exception of the line between Parmele, Hobgood and Rocky Mount, and the line between Rocky Mount and Halifax.
There is a train leaving Selma in the morning connecting at Weldon, arriving at Weldon about 11 o'clock, which would serve the territory between Rocky Mount and Weldon. There is a train leaving Goldsboro in the morning, connecting with our Kinston train at Hobgood, which would take care of the small territory in which I made an exception in outlining the other schedule. Having business from all of the branches into Weldon by 11:10 o'clock, connection is made with the Seaboard Air Line train, arriving at Henderson in time to connect with the train leaving Henderson by

the Seaboard Air Line at 2:15. That train arrives at Durham about 4:05 p. m. I think that is the exact figure, giving a margin of seventeen minutes between the arriving time of the Seaboard Air Line at Durham and the departure of the afternoon Southern railway train for points west.

Q. Let me ask you about the connections that your trains make at Weldon. I will ask you if they are not practically certain
66 connections.

A. Yes, sir; they are through trains and there is no reason why they should not arrive at Weldon in time. Now, that serves the territory for Durham and West Durham, because the connection is made with the Southern railway at Durham on a seventeen minutes' margin.

Q. If they did not change at Henderson they would reach Raleigh and all points up to Cary?

A. Yes, the Raleigh connection would be made by the Seaboard Air Line train to Raleigh and Cary. The afternoon train leaving Raleigh by the Southern, east-bound, arriving at Goldsboro about 6 o'clock, makes it possible, with the figures I have outlined, and in fact do so, for a passenger leaving any point on our line in the eastern Carolina territory, to make a day trip to any point on the Southern railway within the one day, with the exception of the line between Cary and Durham or East Durham.

Now, as to the seventeen minutes margin, which the chairman made some enquiries about. That seems to be a pretty fair margin. A twelve minutes margin is a good one. We consider such schedules as good schedules. They are not always that close, however; sometimes there is an hour's margin. But in a fixed schedule we have such as we can hold and maintain as a marginal time. We would consider fifteen minutes a very liberal margin. A number of our trains do not require a margin of fifteen minutes.

I would further state that our No. 39 train comes down on its present schedule and serves, of course, our entire line on the Fayetteville and Maxton division; connects at Pembroke with the Seaboard Air Line and also at Maxton with the Seaboard Air Line for all points west of Pembroke and Maxton, including Charlotte.

I have not touched upon the movement of business from points between Rocky Mount and Goldsboro, because of the evidence given by Mr. Royall, showing that our morning train out of Rocky Mount makes the connection at Goldsboro, and that service is certainly to Southern railway points all that could be asked for or expected.
67 Q. That has given, in a brief way, the movement in the forenoon from eastern Carolina around by Weldon to Raleigh, and to Durham and points west, showing that they can reach any point, unless between east Durham and Cary, and I think it is probable that the east-bound southern connection would serve them there?

A. I rather think the east-bound Southern train leaves Durham before the arrival of the west-bound train.

Q. Now, take passengers leaving Washington, N. C., and all points between Washington and Parmele, and passengers leaving Norfolk in the afternoon at 4 o'clock, between Norfolk and Rocky Mount, and all points between Weldon and Kinston in the afternoon—show how they can reach Goldsboro and all southern points. Just state how the connections are from every point in that eastern country, except from Plymouth, to any point on the Southern railway.

A. A portion of that territory would be served via Goldsboro with our Norfolk train arriving at Goldsboro in time to connect with the Southern railway train, leaving that point at 9:40 o'clock.

The passengers on the Kinston branch can, of course, leave as far as Halifax and Weldon and come into Kinston in time to connect with the Atlantic and North Carolina train coming by Goldsboro. There is a movement of business from Greenville, Ayden and House by the Atlantic and North Carolina railroad. Up to a certain of those points an evening departure from home and the night arrival at Raleigh has moved some business by that route.

Q. Could a person leaving Washington in the afternoon get to Raleigh that night?

A. There is no connection with the evening train—well, yes, it does—it connects with the Kinston train. That train coming out of Washington in the afternoon at 4:00 o'clock connects with the Kinston train, arriving in Kinston in time to make connection with the Atlantic and North Carolina train, which arrives at Goldsboro to connect with the Southern for Raleigh.

68 Q. That is, a person could leave home in the afternoon and come by way of Kinston and Goldsboro and get to Raleigh on the Southern at night?

A. Yes, sir.

Q. That same schedule, that connection at Goldsboro, can be made from any point from Norfolk to Goldsboro, can it not?

A. Yes, sir.

Q. And by the way of Selma can be made from any point from Richmond to Selma—a person can make connection at Selma with that night Southern train for Raleigh?

A. Yes, sir.

Q. Now, Mr. Emerson, take the afternoon train: The service between Rocky Mount and those places and Selma by your train, No. 39. No. 39 will put passengers from all that country in Selma in time to get that 3:25 accommodation train for Raleigh?

A. Yes, sir.

Q. So the people in that country, except Plymouth and Parmele, have a double line service and the only inconvenience is that from Selma, if they come on your No. 39, they take an accommodation train to Raleigh?

A. Counting the accommodation train, they have practically three trains.

Q. Now, Mr. Emerson, as to the doubt of making the Durham connection. The trains from eastern North Carolina reaching Wel-

don are nearly all trains leaving on arbitrary schedules, not making any connections except scheduled North Carolina points. The Seaboard Air Line train, with which they make connection, leaves Portsmouth arbitrarily and always gets to Weldon at a certain time, unless they have a break down or something on that order?

A. Yes, sir.

Q. And the only doubtful point of that connection at Durham is between Norlina, where the train from Richmond comes in, and Henderson? What is that distance, do you know?

A. It is fifteen miles.

Q. The distance now from Henderson to Durham is what?

A. Forty-one miles.

69 Q. So if the train from Durham, in case of delay on the main line, should run to Norlina, there would never be any doubt about the connection with the Southern at Durham between eastern North Carolina points? It would always make the connection with eastern Carolina points and points west of Durham?

A. Yes; I would say that was so at this time with the present service.

Q. But I mean with the seventeen minutes margin now, with entire local service, except fifteen miles, and that train lying over at Henderson?

A. Yes, sir.

Q. Now to the western part of the State—the Charlotte connection—you serve that in addition to the methods prescribed at Pembroke. What is that connection?

A. The Seaboard Air Line train in the afternoon.

Q. How close is that?

A. It is a right close margin. I could not give you the exact figures.

Q. Is it usually made?

A. Yes, with No. 39, either at Pembroke or Maxton. We have the advantage with the Maxton branch from Fayetteville, because of being able to make time, you see we cut off a triangle in there, and we make the Seaboard Air Line connection twenty-five days out of thirty, either by Pembroke or Maxton, sending the passengers either way it is made.

Q. So passengers leaving all Coast Line points in this territory and going that territory and going that way, will be able to reach Charlotte by bedtime that night?

A. Yes, sir; they get there about 10:30, I believe it is. And I would say that this schedule served by our No. 39 train in our present eastern North Carolina section would represent from 90 to 95 per cent. of the business as against 70, or I will say, 5 per cent. of the business that moves up in this direction.

Now, there was a question asked by the chairman as to how we arrive at the number of passengers hauled and delivered to the Southern railway at Selma. I asked this question yesterday because I

wanted to furnish the board some information as to the movement of business since the schedule has been disturbed; and at first
70 I thought I would be able to bring the figures with me, but afterwards the auditor of passenger receipts came to me and stated that because yesterday was the first of the month all conductors and ticket agents' reports were not in to make up and give the January movement. That was the month I asked him for. He compiles that from the agents' reports and the conductors' reports. In handling the mileage stubs, or coupons lifted from the mileage tickets, our conductors enter on the back of the stub lifted the number of the station at which the passenger boarded a train and the number of the station at which the passenger left the train, so there is a complete and perfect check of our mileage tickets.

Q. Of course, that is the mileage slip, and the tickets taken up as well as cash fares are all reported, directly or indirectly, to the auditing department, and the auditing department can show the station at which every passenger boarded a train and the station at which he leaves the train, unless some one dodges the fare. And it is from that statement that this compendium has been tabulated?

A. Yes, sir.

Q. Practically, how long have the schedules that are now enforced in eastern North Carolina been on your road? How long have they been enforced?

A. For a number of years.

Q. Practically, ten years?

A. For quite a long time. Possibly they have varied five or ten minutes, but they have been the same for so long that when we change the arriving time or the time of departure of a train, we use special care in advising the people of the change.

Q. Practically, your train No. 39 from the North has been reaching Selma at about 3:00 o'clock since the Short Cut became the main line?

A. Yes, sir; ever since No. 39 was run by the Short Cut.

Q. That was about '92, I think?

A. Yes, I think so. I cannot give the exact year.

Q. And your connections at Weldon have been practically what they now are since you built your new lines in eastern Carolina?

A. Yes, sir.

71 Q. And the schedules of the trains arriving at Rocky Mount from the various directions have been about what they are now?

A. Yes, sir.

Q. I will ask you if your road has not recently extended the run of the Richmond train to Selma, thereby making the connection with the Raleigh train?

A. That train runs to Smithfield, but it makes connection at Selma.

Q. And I will ask you if the schedule was not changed for the

morning train leaving Rocky Mount for Goldsboro in order that connection might be made for Raleigh?

A. Yes, sir. Our train was also changed at Rocky Mount for Wilmington to make connection with the Southern train.

Q. Now, Mr. Royall (Emerson), is there any method by which your schedules could be changed to give the people better service without your being required to put on additional trains?

A. No, sir; there is no practical way that I can see whereby we can serve the eastern North Carolina people, furnishing the facilities we now offer for movement in all directions—north, east, south and west—unless we put on an extra train. And other arrangements would——

Q. Now, suppose the company were to put upon the road between Rocky Mount and Selma, the additional train suggested, it would precede your regular train doing local work about what length of time—your train No. 39?

A. About thirty minutes.

Q. Returning—bear in mind it must get to Rocky Mount in time to make the eastern connection in the afternoon—how near would it follow your train No. 40, north-bound?

A. Less than an hour—hardly as much as forty minutes.

Q. So it would be half an hour ahead of one and half an hour behind another. Is there any reason to apprehend that there would be any slight increase in your traffic?

A. I do not see how it could be possible.

Q. Any person that that additional train would carry would be a person who would use your trains to Weldon, Wilmington, or Goldsboro, as they now do?

A. Yes, sir.

72 Q. The road would receive absolutely nothing more than it does now for that traffic?

A. No, sir; nothing more because of the service we already have. It would be a dead train from Rocky Mount to Selma and back, so far as revenue earnings are concerned.

Q. It would be a steady and considerable expense with no prospect of any revenue?

A. I shall say your statement is true.

Q. Is there any passenger who would be put at any place by use of that train who could not get to the same station by use of the Seaboard Air Line route at practically the same time—the same day—with the exception of eighteen miles between Cary and East Durham?

A. The time would be practically the same, in fact the same to all points, Durham and East Durham—it is a little longer time between Cary and Selma.

Q. But all in the afternoon of the same day?

A. Yes, sir.

Q. At the farthest point, not more than an hour more?

A. No, sir.

Q. And the average cost of running a revenue-bearing train has been ascertained, according to the experience of this road, to be $1.02 per mile—that, I believe, is what you stated has been the experience of the road. And this train that the commission suggested being put on, if a lighter train, has been figured at about seventy-five cents a mile, $65.00 for running eighty-four miles—about three-fourths of the usual cost?

A. You are using the figures quoted by Mr. Royall?

Q. Is that the exact cost or an estimate of what the cost of running that train would be?

A. Well, Mr. Pou, it is practically impossible—we have never been able to arrive at any rule or fixed basis by which we could determine the actual cost of operating a train. We must take experience, our knowledge based on experience. Now, when you
73 single out one train and work the cost per mile for running that train, you would have to take into consideration the mileage; you would have to take into consideration the class of service; you would have to take into consideration the wear and tear; you would have to take into consideration the actual additional expense so far as employees are concerned—that is, the increased number of employees or the hours of labor for the operation of that train; you would have to take into consideration, very naturally, the cost of the maintenance of the property, because it is a different proposition in running a wagon train up a turnpike—it increases all the work at all the agencies; it increases the labor at all of the telegraph offices; it increases the labor in your shops; it increases the labor in your machinery department and the work in your general departments—there is not a department in connection with the road but what the addition or cutting off of one train affects. You will, therefore, readily see how hard it is to arrive at the actual cost per mile of the operation of a train. Our knowledge based on experience shows that $1.02 will make our average cost per train mile; that includes our branch lines, the cheaper class of trains, with the heavier class moving over the main line. But singling out a train, such as described, leaving out the extra equipment necessary—and that is necessary—because when you increase the mileage, you increase the wear and tear, and you must be better prepared for a long mileage than you would be for a shorter mileage—leaving out the expense of the increased cost of equipment, you are certainly within the limit when you fix upon a figure of about 70 or 75 cents per mile for the operation of that train.

Q. That is the best estimate you can make, considering all the circumstances and everything?

A. Yes, considering everything that enters into the operation of the train.

Q. In arriving at the average cost of $1.02 per mile, the operation of quite a considerable number of light trains on your road has re-

duced the average cost of a considerable number of heavier
74 trains, and that is the average instead of the maximum?

A. A light passenger train, a light branch train, and all have been included in that.

Q. A larger train would be as much above $1.02 as the lighter trains are under?

A. Yes, sir.

Q. Mr. Emerson, you have mentioned that the two very long runs that your road makes from Wilmington to Norfolk and from Smithfield to Richmond and back are made practically by having two crews, the same crew not being required every day to make that run?

A. Well, Mr. Royall made that statement, and I could only deal with it in a general way, because it is not in my department as to the crews employed, but I do know that the Norfolk crew is not run every day to Norfolk and back every day from Norfolk.

Q. They make a long run and then a short one?

A. The Norfolk people, I believe, make two long runs and a short one and lay over.

Q. So the service from Wilmington to Norfolk and from Smithfield requires the service of two crews. And your judgment is that if the run was extended from Plymouth to Selma that it would be found too long for the steady performance of one crew.

A. I should answer "yes." You would keep that up for a few days—perhaps to-day, to-morrow and the next day, and then you would be compelled to let them lay over; and in the assignment of crews to duty, it is safe to say that where they give them a long run they give them a short run to offset that.

Q. In addition to this extended run, to make this run from Plymouth, would require the building of a coal chute somewhere on the line and the equipment of that line for coal instead of wood?

A. Yes, sir, and the hauling of the coal into the chute.

Q. To equip the Nashville branch—that would mean heavy enough rails, equipment and everything to bear the engine regularly and safely, which would make the run required—would require the equipment of that line for coal and the supplying of other
people to do the switching at Rocky Mount and Spring
75 Hope?

A. In the operation of our branch line trains, there is certain station work done, not only at the terminal points but intermediate points. The train is scheduled so as to give all the service required. When you couple a branch line to your main line you must bring everything up to the standard. The expense is greater.

Q. In short, to use the Nashville branch to make this run to Selma would require you to bring the Nashville branch up to the main-line standard?

A. Yes, sir; I should say so.

Q. It is now a first-class branch line?

A. Yes, sir.

Q. And it would require you to make it a main line?

A. Yes, sir; I think the commission is satisfied that it is not in as good a condition as our main line between Rocky Mount and Selma.

Q. And the same thing about the Plymouth branch?

A. We do not know about that?

Q. If required to make that run between Rocky Mount and Selma in the hours named by the commission, considering everything, would it be cheaper and more practicable to run either the Nashville and Plymouth train on to Selma or put on an entirely new train? Which would the road find it most practicable to do?

A. To put on an extra train.

Q. If you take either of the other crews, the expense would be the same and the inconvenience greater?

A. Yes, sir.

Q. So the obedience to the commission could be more economically had by putting on a new train entirely and we could figure on the expense of that?

A. Yes, sir.

Q. Now, as to this service I have mentioned. We will take Spring Hope. A person can leave Spring Hope in the morning and get to Raleigh that night by going around to Weldon?

A. Yes, sir; they could go by Goldsboro.

Q. So they could get from Spring Hope—there are two trains?

A. Yes, sir; 5:15 in the evening and another at 11:20 in the morning.

76 Q. Now, it is estimated that the loss by putting on an additional train to Selma, without the hope of an increased dollar of revenue, would be in the neighborhood of $20,000 to $25,000 a year. It has been estimated that it will cost about $65.00 a day and that would amount to somewhere between $20,000 and $25,000 a year. Capitalizing that at four or four and one-half per cent., I will ask you if it would not pay the interest on more than enough money to build and equip a railroad from Spring Hope into Raleigh—thirty miles?

A. I am not prepared to answer that, Mr. Pou. I would say the estimate you have as to the operation of the train is not excessive.

Q. Say, put that at $22,000 or $23,000—it is $65.00 a day—and 4 per cent. of $20,000—say $600,000. That would easily build a railroad like the Nashville branch?

A. I do not know the mileage from Spring Hope to Raleigh.

Q. Something like thirty miles. Thirty miles at $20,000 would be $600,000, and you could pay the interest on that money with what you would lose running the train from Rocky Mount to Selma and not only get the travel from Rocky Mount to Selma, but the local business between Spring Hope and Raleigh additional?

Mr. BEDDINGFIELD: Mr. Pou, is that your suggestion for the solution of this?

Mr. POU: No, sir; I am showing the effect of the order.

Mr. EMERSON: I am not prepared to answer the question, I fear.

Q. Do you know, Mr. Royall, about that?

Mr. ROYALL: No, sir; I do not know.

Q. Well, we will take the tax value of the roads and judge by that. Is there anything else that you can think of, Mr. Emerson, that will throw any light on this matter?

A. I think that covers the ground.

Q. Is there any questions that you gentlemen would like to ask now?

77 Cross-examination by Mr. McNEILL:

Q. What is the population of that territory of that part of North Carolina that you serve? Do you know, Mr. Emerson?

A. I am not prepared to answer that, Mr. McNeill.

Q. Do you know it to be a fact that it is between four and five hundred thousand people?

A. That may be so.

Q. What revenue do you derive from the people of that territory within the State of North Carolina?

A. Our reports are kept in the shape as filed with the commission, and those figures would show better than I can answer. I do not undertake to carry that information in my head. I simply refer to it as the commission or any one else would.

Q. I think the report for your last year shows that you had net earnings to the amount of $1,983,000.

A. In North Carolina?

Q. Yes, sir; I think so, in North Carolina.

A. I do not think it is that, Mr. McNeill. Mr. Brown has a report, has he not, and he can refer to it and tell us exactly.

Q. I mean freight and passengers.

A. Well, that may be so. Those reports not only show the total, but also the freight and passenger traffic separately. The reports are filed here.

Q. But I was talking about, in a general way, the earnings from operation in North Carolina. The bulk of your business from that territory to Raleigh and other Southern railway points is via Selma, is it not? That is the straight way? Which is the shorter way, via Selma or via the other way to Raleigh and points west of Raleigh?

A. By Selma.

Q. By how many miles?

A. That I could not answer. The schedules will show. I have not dealt with the mileage at all.

Q. You know that is shorter. It is about forty or forty-three miles shorter, is it not? But you say you do not know, and you cannot be accurate about it. But it is a shorter line?

A. Yes, except from Greenville and Kinston. From Greenville, he shorter line would be by Kinston.

Q. From Washington, Plymouth and Tarboro, the shorter route is by Selma?

A. Yes, sir.

78 Q. I will ask you, Mr. Emerson, if you ever made this connection at Selma with this train that arrives there at 2:50 p. m. with the Southern train for Raleigh?

Mr. DAVIS: You mean train No. 39?

Q. Yes, sir; I mean with the Southern train leaving Goldsboro in the afternoon? Did this train No. 39, arriving at Selma at 2:50 in the afternoon, ever make connection with the Southern train leaving Goldsboro in the afternoon?

A. The Southern train? I do not think we have in several years. We have made an earlier arriving hour than we have now with No. 39 there.

Q. But were you scheduled to make connections with the Southern train?

A. Yes, sir; we have been.

Q. Did you keep that schedule, was the question I meant to ask?

A. You mean to make the connection?

Q. Yes, sir.

A. Well, I will say we have made it.

Q. How long has that schedule been there?

A. For years.

Q. Ten years?

A. Yes, sir; with slight changes.

Q. You recommended that connection any how?

A. That was our connection for Raleigh.

Q. I will ask you, Mr. Emerson, if during those ten years you ever made that a reasonably sure connection? The record of your train sheet show- that your train No. 39 only arrived at Selma on schedule time twice between August 1st, 1903, and January 11th, 1904, and that during this period No. 39 was more than ten minutes late every day except twenty-four. So within five months this connection was made only about twenty-four times. Now was that a sure connection?

A. Your question is then, as I understand it, whether we missed that connection a greater number of times than we made it?

Q. Yes, how many times did you make that connection?

A. I could not answer that with the figures, but the record of our arriving time at Selma would show that it is not a safe connection now.

79 Q. That is latterly, but how about a few years ago?

A. We served the territory without any loud complaints then.

Q. But, Mr. Emerson, you missed it more than you ever made that connection. Your records show you made it only twenty-four times in four of five months. For several years you kept it, but

latterly you did not. Then, which way did the volume of traffic go—the short or the long way—when you did make this connection?

A. The volume of traffic up to the time that connection was broken went by Selma and not by Weldon.

Q. Can you give any reason for that?

A. No. 39 schedule suited them, I reckon.

Q. That was a better train?

A. Yes, sir.

Q. That would put them at any point on the Southern road in the same day up to Greensboro and give them western and southern connections?

A. Yes, sir.

Q. So it was the most desirable train?

A. Yes, sir.

Q. Now, was there any other reason for people taking that route?

A. Why they went that way?

Q. Yes, sir.

A. The strongest reason was because it cost less money.

Q. It was the cheapest way, then, Mr. Emerson?

A. Yes, sir.

Q. How much cheaper?

A. The difference in the distance, of course.

Q. So that was the surest connection and the cheapest route for the bulk of the business from that territory to all points?

A. Not to all points, Mr. McNeill.

Q. But the bulk of your business went via Selma?

A. Well, that may be so. We have the same rates via Weldon, although the mileage may be greater.

Q. That is to competitive points?

A. Well, they are based on Raleigh and beyond Raleigh would be the same.

Q. All western points?

A. Yes, because the rates to Raleigh would be the same and beyond Raleigh the same, because the rates are based on Raleigh. Of course, to some points would be a higher rate.

80 Q. But the fact is that the volume of traffic was by Selma?

A. By Selma, I reckon, but I have known certain times when the movement by Weldon was very marked as compared with Selma.

Q. Now, speaking of this connection by Weldon. I will ask you, Mr. Emerson, if it is a certain thing to any points except Raleigh and Durham?

A. I would advertise it, as a traffic man, as a certain connection.

Q. In spite of your experience at Selma?

A. Yes, sir; and in spite of connections with other lines. If you allow 17 minutes as a margin, you have done everything you can hope to do to make that connection there. If you give an hour's margin, it would protect the connection, of course, but in arranging

a schedule, if given fifteen or twenty minutes as a margin, we feel that we have made a sure schedule.

Q. Mr. Barden states that on an average for five months, from August 1st to December 10th or 11th, your train at Selma was on an average of thirty-four minutes late.

A. Did he tell you why so?

Q. No.

A. Did he say that when they schedule a train to leave Richmond at a fixed hour and run to Selma, that fifteen minutes margin was not what was required to make it?

Q. I am talking about the connection—your train did not make the connection. You were thirty-four minutes after schedule time.

A. I do not think it is a real fair thing to schedule out No. 39 train to determine what margin is necessary at a junction point.

Q. Well, take the Seaboard Air Line at Henderson—does it not depend on its connection from North?

A. Not necessarily so.

Q. Is it not the same class of trains? This train from Portsmouth in the morning connects with that train—the through train from North at Norlina—it waits for it at Norlina. I mean this train that connects with the train from Durham at Henderson. It waits
81 for this through northern train at Norlina?

—. This train from Durham connects with the train from Portsmouth at Henderson. We connect with this Seaboard Air Line train and give them our passengers.

Q. But the Portsmouth train waits at Norlina for this train that leaves Washington?

A. This train from Portsmouth is due at Henderson at 2:10. The schedule leaving time of the Seaboard Air Line from Henderson for Durham is 2:15. The Seaboard Air Line has a margin of five minutes.

Q. But the Durham train waits for it any way. Durham is the terminus of that train—it spends the night there. It has no connection there, so it waits for it?

A. It has no connection with the southern train, for these people from that local territory and the passengers it gets at Henderderson from the Seabeard Air Line train from Portsmouth.

Q. But that is what we are talking about. It is a certain connection?

A. I should call it so.

Q. But that is not the only service performed by that train. Does not the train from Portsmouth wait at Norlina for that northern train?

A. It does not wait for that northern train unless that had passengers on the Richmond train.

Q. Then, it would not serve your passengers?

A. But our passengers come down on a train that has an arbitrary time for leaving Portsmouth.

Q. Does it not wait at Norlina, though?

A. No, sir.

Q. For mail and express?

A. No, sir; I understand they are operating two trains—a Richmond and Portsmouth train. I know I have waited at Hamlet in the Portsmouth sleeper for the arrival of the other train.

Mr. BEDDINGFIELD: But is that not true only when the train is running exceedingly late?

A. No, sir; I think not.

Mr. MCNEILL: You have a train leaving Norlina, which is your Richmond connection, at 5:33 in the afternoon, arriving at Hamlet at 10:30?

A. I was talking about the train that went on out to Dur-
82 ham and thought you were talking about that one also—the one that connects at the train for Durham at Henderson?

Q. Yes; but I had in mind then the C. C. connection, the 2:00 o'clock train and the 5 o'clock train. Does that wait for that northern train for Richmond?

A. Yes, sir.

Q. If that was very late, it would delay the train from Henderson to Durham just like you are delayed at Selma?

A. That might be so.

Mr. ROGERS: Your own train No. 39 was delayed by waiting on northern connections at Richmond?

A. Yes, sir; but the Seaboard Air Line would not wait on our connections.

Q. Would it wait on its own connections?

A. It would wait on the train leaving Washington, but they have not got a connection north of Richmond for that train.

Mr. MCNEILL: North of Richmond?

A. No, sir; not the Seaboard Air Line. A train leaves Washing about 10:46 in the morning.

Q. But I mean one before that?

A. No, sir; they do not hold the Durham train for the Richmond connection. And when I stated Richmond connection, I did not mean this through train from the East. It leaves Washington at 10:46 in the morning, leaves Richmond about 2:20 in the afternoon and arrives at Norlina at 5:15 and at Hamlet at 10:30. It there connects with the Atlanta train which comes from Portsmouth, leaving Portsmouth at 9:10 in the morning, making connection with the train that leaves Richmond at 10:00 in the morning, but it has no northern connections. That train from Washington arrives at Richmond at 2:00 o'clock in the afternoon. Those figures may vary slightly from your schedule because of the winter changes. Therefore, the Henderson connection is almost sure.

Q. If it is a very unsafe connection, then that does not furnish facilities from your territory to the western part of the State other than Raleigh and Durham, does it, Mr. Emerson? It means the

passengers must spend the night in Durham and go on the next day?

83 A. Will you let me answer that question by asking you a question, Mr. McNeill, as to the figures by Selma? The order of the commission is that we shall arrive at what time?

Q. At 2:25 in the afternoon or fifteen minutes thereafter.

A. The commission then considers fifteen minutes as a fair margin for that connection?

Q. We understood that your train from Norfolk to Rocky Mount was generally on time?

A. That is pretty safe.

Q. And then the train from Plymouth to Rocky Mount was on time, and the train from Washington was on time—and your train from Spring Hope had plenty of margin—so we thought that your train leaving Rocky Mount a 1:00 o'clock, as it could do without depending on any northern connections, would give you this connection at Selma on a fifteen minutes margin?

A. That is the condition via Henderson and Durham. A train leaves Portsmouth, via the Seaboard Air Line, and Richmond, via the Seaboard Air Line, at 9:10 in the morning. It is reasonably sure they will reach Henderson at 2:10 o'clock. They connect there with their own train which leaves Henderson at 2:15 and arrives at Durham at 4:05 in the afternoon, giving seventeen minutes margin for connection with the Southern railway. Therefore, when you consider the Henderson and Durham connection as being safe or unsafe, or as sure or not sure, it would be fair to make the comparison with what the commission asks us to do by Selma. In one case we have seventeen minutes and in the other fifteen minutes.

Mr. Pou: The holding of train fifteen minutes at Selma, and holding seventeen minutes at Durham?

Q. We know how yours is.

Mr. Beddingfield: Do you consider these connections and the margin of fifteen minutes on an equality with each other?

A. You mean the Durham seventeen minutes and the running of trains? I would say, if anything, it was in favor of Durham, and for this reason that your train starts from Goldsboro and

84 comes to Selma. It has no connection to wait for at Goldsboro and has only twenty-nine miles from Goldsboro to Selma and the chances are that she will not lose any time. The further she runs the greater the risk of delay. As you go in the direction of Durham, the risk of delay becomes greater; therefore, I should say if a fifteen minutes margin was safe at Selma, seventeen minutes would be more than safe at Durham.

Q. You say the further you go, the greater the risk of delays. How much further by Durham than by Goldsboro?

A. The schedules are so arranged that when you get to Weldon, you are as near as you would be to Goldsboro. The Weldon schedules are fixed so as to assure connection at Weldon.

Q. Is it not a fact that this Portsmouth train with which you connect at Weldon has to come to Norlina and there wait for a south bound train the same class as your No. 39?

A. No, sir; what would you call the same class?

A. I mean a through train that does local business.

A. Well, if we start No. 39 at Richmond, there would be so much trouble. When the Seaboard Air Line starts at Richmond, they have no connection from the north. I will mention that if you will take the record of the two trains of the Seaboard Air Line from Richmond and Portsmouth, counting the leaving time and the arriving time at Henderson, and that record will show favorably with any trains that are operated through the State of North Carolina.

Mr. McNeill: Then take it if you miss the connection at Durham, that you make around by Weldon, I will ask if that does not seriously interfere with the traveling facilities from your territory for the west—that is if you are mistaken about how certain it is. It would interfere materially with your services to the west?

A. If, as a matter of fact, the connections were not made? But we claim that they are made.

Q. But if the connections are not made?

A. Now, taking your question as to the service, Mr. Mc-
85 Neill—the service we are offering by the Atlantic Coast Line is sufficient to accommodate the volume of business that is moving to the western part of the State.

Q. Now, let us see how you are going to do it. How from Plymouth or Washington?

A. From Washington, around by Kinston, on to Goldsboro and then to Selma. You have the Tarboro branch, the train from Halifax and Weldon, from Hobgood—they all come together and connect with the night train by Goldsboro and on to Selma.

Q. When you come by Goldsboro at night, you connect with a freight train, do you not?

A. That is a passenger train—it carries a baggage car, it carries a first and second class car; and it has a sleeper.

Q. They have the sleeper from Raleigh.

A. I believe they have stopped putting on the sleeper at Goldsboro and put it on at Raleigh. They are hauling freight cars on it.

Q. But they do haul freight cars on it?

A. Yes, I have answered that question.

Q. But they have to leave home the morning before?

A. No, sir; from all points between Kelford on the Norfolk and Carolina road, from the Washington branch line points by Kinston, and the entire branch line by Kinston, you can leave in the evening and make connection with that night train. That train connects at Greensboro with the morning trains out by the southern for all points in the western part of the State. It is a freight train perhaps, but it is and has been a popular train with our people for western

points, especially when they carried the sleeper from Goldsboro to Greensboro.

Q. But the trains from where?

A. The Wilmington and Norfolk trains connect with this train at Greensboro. That is our popular route for people going to Asheville and points west. Our train No. 39 does not put the passengers so that they can reach the resorts until 12:00 o'clock. That night train represents our heaviest movement of tourists that we have
86 between eastern Carolina and western Carolina. As a matter of fact, that train gives them a better service than train No. 39, or than any other train can possibly give them.

Q. Take up Plymouth and Wilmington and Washington.

A. Well, you can leave Washington at 4 o'clock in the evening and be in Asheville at 1 o'clock the next day. You can leave Rocky Mount at 8:00 o'clock in the evening and be in Asheville the next day; you can leave Weldon, Halifax, Wilson, Elm City, and every point on our line, with the exception of Plymouth and Williamston, and be in western Carolina the next day. That is a better service than we can possibly fix with your No. 39 train. It puts them there in the night.

Q. But how many hours is that?

A. Well, from 7 to 7 o'clock is twelve hours, and at 1 o'clock you are in Asheville—over the entire line in about sixteen to twenty hours.

Q. You travel one night and one day?

Mr. POU: You strike the mountains at 1 o'clock in the day.

Mr. ROGERS: I think you are there for dinner at 3 o'clock.

Mr. EMERSON: You can arrive there in the middle of the day instead of night on that train. It is the train, so far as eastern people are concerned, for western North Carolina.

Mr. ROGERS: Take the afternoon train—what time would that put you in Asheville?

A. One or two o'clock in the night.

Q. How many hours difference would that be?

A. Well, from 12 o'clock at night until 1 or 2 o'clock the next day.

Q. I understand if you were to leave Selma in the afternoon at 3:25 o'clock, you would get to Asheville at 1:30 that night—and if you leave Washington at 8 o'clock in the morning, by 6 o'clock the next morning you would be in Greensboro and by 3 o'clock in Asheville.

A. No, sir; you can leave Washington in the afternoon and get to Asheville by 1 o'clock the next day.

Q. But do I understand you to say that you can leave
87 Washington in the morning at 6 o'clock and get to Asheville that afternoon at 3 o'clock?

A. No, sir; you leave Washington in the morning at 6 o'clock and get to Asheville that night at 2 o'clock, about.

Q. If you fail to make connection at Selma what time could you get there?

A. The same time.

Q. Would that not be twelve hours' delay?

A. If you made connection at Selma with our 8 o'clock train out of Washington you would make the same time to Asheville as via Weldon and Durham to Asheville. With that train, granting the train you want to put on, you would not improve the service, for, as I have stated, that night train out of Goldsboro is the train with which we serve that territory.

Q. I understand that; but that puts you in Asheville the afternoon of another day?

A. You start at 7 or 8 o'clock one afternoon and you are there the next afternoon, say, by 3 o'clock any way—but I think it is 1 o'clock in the day. Mr. Rogers may be right, but the schedule here says 1:40 o'clock.

Q. Is that central time?

A. No, sir; that is eastern time. They change time at Asheville. So, Mr. Chairman, if you please, I do insist that with all of our business, and merely from a traffic standpoint, from eastern Carolina to western Carolina, by the Southern railway and our connections with the Seaboard Air Line, our present schedules are all that we should be asked or required to make to perform and carry on or handle that business.

Q. About the volume of travel, Mr. Emerson. You say you tell about the tickets sold by the conductor's report and the ticket agents' reports. Those amounts are all together, though, are they not? Your local traffic and traffic to other roads—they are all reported together?

A. Not necessarily so.

Q. But, suppose a passenger from Tarboro is going to some point on the Southern railway. How would you tell about that?

88 A. Well, not without verifying the auditor's figures. I am rather inclined to believe that he has included in his statement a lot of Selma proper business.

Mr. Davis: I wish to state that the enquiry that was made of the auditor was simply calling for that information (without) his knowing for what purpose or object asked for. We did not point out to him our object in asking that information.

Q. I wanted to see what Mr. Emerson knew about these figures.

A. I expect the bulk of our Raleigh business and for Southern railway points is handled on coupon tickets, however.

Q. Do you sell tickets to other than competitive points?

A. Yes, sir.

Q. Say, from Plymouth to Auburn—that is a point on the Southern railway. Will you sell a ticket to that point?

A. Yes, sir, and to Burlington and all those points. We do not sell those tickets at all of our local stations, but where to junction

points we sell them. It is better to get a ticket down at Rocky Mount and check baggage through than have to get off at Selma and get a ticket and transfer your baggage. The whole of our interchange is on through tickets.

Q. If mileage books, how then?

A. If they had mileage books that would show if at Selma——

Q. But they would not show whether to Goldsboro or where?

A. No, not unless baggage was checked there, and that is why I believe some of the Selma business has been included. I am afraid of that. I can give you the amounts in detail and will be glad to do it and tell you exactly how these figures were arrived at.

Q. I have been over that road twice. I had been down to Wilmington and when returning I found there were forty passengers at Selma to take the train there that night.

Mr. Pou: But all of those were not passengers left over there. The Richmond train brought some of them into Selma.

89 Q. Now, I am talking about the volume of transfer of passengers from one road to another. I was informed that it was an average of forty passengers. I was there one other night and I found just about the same number.

Mr. Pou: That must have been during the time when the school girls and boys are coming home. About that time there are large crowds of college boys and girls.

Q. Well, I guess it was about the first of January when I saw that.

A. That is an exceptional time.

Q. Now, Mr. Emerson, that morning train of yours that leaves Rocky Mount does not connect with any other of your trains?

A. No, sir; not at Rocky Mount.

Q. You have no connection anywhere with that train?

A. No, sir; no connection from points beyond Rocky Mount with the train at Rocky Mount?

Q. It really serves Rocky Mount and intermediate points for Goldsboro?

Mr. Rogers. Mr. Emerson, what is the difference of the cost of a passenger from Rocky Mount by the way of the Seaboard Air Line to Raleigh and by way of Selma to Raleigh?

A. I could give you that information if I had our passenger tariff before me. Mr. Brown, do we file a copy of our through rate sheets with you?

Mr. Brown: No, sir, you do not. I would be glad to have it and have written and asked for it but have never received a copy.

Mr. Emerson: That is an interstate tariff, but in addition to that it carries a lot of Carolina traffic. It shows where the coupon tickets are sold and the rates to different points. We will file that with you.

Mr. Pou: Take Parmele. Every connection with the west must go through Durham. Take the mileage by Weldon and by Selma, what would be the difference from Parmele?

A. The difference from Parmele would be 55 cents. The difference by Goldsboro would be 5 cents in favor of the Selma route.

90 Mr. ROGERS: Do you cut the rate on a mileage basis?

A. No, sir; we do not.

Q. You all know Parmele is a center and Durham is a town through which all passengers must pass.

Mr. EMERSON, after going out and examining the rate tariff, says: That difference is about 10 cents. I make the difference, taking Parmele on Durham, about 10 cents in favor of the Selma route. Using the line via Weldon is, of course, about 10 cents higher than by way of Selma.

Q. There is not much difference in the mileage?

A. Forty-four miles, I think.

Chairman MCNEILL: To all intermediate points the difference is about forty-three miles.

A. The rate is about 55 cents. But when it comes to a question of passenger rates, if there are any suggestions that the board might have to make in that line we will be glad to consider them.

Q. I understand that the popular train for your eastern territory is that night train?

A. Yes, sir; for western North Carolina resorts.

Q. How long has that been on?

A. About three or four years.

Q. Up to the time that was put on what was the schedule?

A. We had trouble to get a schedule that served the people with any satisfaction. The day schedule did not succeed on account of the late time of arriving at the resort. When we got the train on at night it gave us a number one schedule for western North Carolina resorts.

Q. Those tourists are cared for with freight cars?

A. To Greensboro only.

Q. It does not go any further than Greensboro?

A. It connects with the train for the west.

Q. No sleeper then?

A. No, sir.

Q. Suppose the Southern would discontinue that train? What of the service then?

A. But the Southern railway would hardly discontinue the running of trains over its North Carolina road.

91 Q. But just this one?

A. It would destroy our present schedule for western North Carolina, of course.

Q. You know it cannot do much of a local business from the hour it runs?

A. It seems to me it is doing a very good local business.

Q. I mean passenger business. It has nothing but carload freights.

Suppose it would turn out that it did not pay—then what connection would you have?

A. Certainly, our schedule and tourists for the western part of the State would be very much reduced.

Q. Would you say it would pay as a night train, if the freight was not on there?

A. Well, judging from what Mr. McNeill said, if taking forty passengers per day, I should say it was doing a pretty good business. I could not answer as to what the Southern railway people are doing in the way of revenue. As to carrying freight cars, it occurs to me that there is no special objection to handling freight cars on that train, it being night service.

Mr. Pou: All of these trains we have been discussing are trains regularly doing passenger business, and your train No. 39 that gets to Selma about 3:00 o'clock makes connection with the west-bound Southern accommodation train, No. 183, leaving Selma at 3:25, and that train is in addition to those we have been discussing?

A. Yes, sir.

Mr. Pou: If the board please we will consider all the schedules as evidence.

Argument is heard and the commission announces that it will take the matter under advisement.

92 North Carolina Corporation Commission.

RALEIGH, N. C., February 13, 1904.

In the Matter of the Schedule and Connection of Trains of the Atlantic Coast Line Railroad Company and the Southern Railway at Selma.

This cause coming on to be heard upon exception by Atlantic Coast Line Railroad Company, and being heard on the 2d day of February, 1904, the Atlantic Coast Line Railroad Company being represented by Junius Davis, Esq., and James H. Pou, Esq., counsel; and after considering the evidence introduced, and matter appearing from the record in the case, and from files in the office of the corporation commission, the following facts pertinent to the exception appear:

The Atlantic Coast Line Railroad Company operates a through passenger train, No. 39, from Richmond to Jacksonville. This train is scheduled to leave Richmond at 9:05 a. m., arrive at South Rocky Mount at 1:10 p. m., and leave at 1:30 p. m. and arrive at Selma at 2:50 p. m. For about ten years this train was scheduled to make close connection at Selma with local passenger train No. 135 of the Southern railway at Selma. This latter train was scheduled to leave Goldsboro at 2 p. m., Selma at 3 p. m., Raleigh at 3:52 p. m., Durham at — p. m., and arrive at Greensboro at 6:35 p. m. The Atlantic Coast Line Railroad Company now operates, and for about ten

years has operated, passenger trains on its branch roads which center at South Rocky Mount as follows:

Train No. 68 from Spring Hope to South Rocky Mount, leaving Spring Hope at 11:20 a. m. and arriving at South Rocky Mount at 12:10 p. m.

Train No. 49 from Norfolk to South Rocky Mount, leaving Norfolk at 9 a. m. and arriving at South Rocky Mount at 12:50 p. m.

93 Train No. 65 from Plymouth to South Rocky Mount, leaving Plymouth at 7:30 a. m., arriving at Parmele at 9:10 a. m., at Tarboro at 10 a. m. and at South Rocky *Rocky* Mount at 10:35 a. m.

Train No. 71 from Washington to Parmele, leaving Washington at 8 a. m. and arriving at Parmele at 8:55 a. m., and there making connection with a train from Plymouth at South Rocky Mount.

Train No. 58 from Kinston to Weldon, leaving Kinston at 7:30 a. m., arriving at Parmele at 9:10 a. m., and there making connection with train No. 65 from Plymouth to South Rocky Mount; arriving at Hobgood at 9:55 a. m., and there making connection with train No. 49 from Norfolk to South Rocky Mount and arriving at Weldon at 11:10. By means of these branch roads connecting with No. 39, the Atlantic Coast Line's train from Richmond to Jacksonville, which in turn connected with train No. 135 of the Southern railway at Selma, the greater portion of the section of the country reached by the said branch roads was for years furnished the nearest and cheapest route of travel to Raleigh and other Southern Railway points. The greater portion of the travel between this Atlantic Coast Line territory and Southern Railway points was by this route. It is admitted in the correspondence of the Atlantic Coast Line in this matter that this was the most important connection, being the principal outlet for passengers en route from eastern Carolina territory to Raleigh and other Southern Railway points. There seems to have been no complaint about the failure of these railroad companies to keep this schedule and make this connection until about the year 1900. The Atlantic Coast Line Company informs the commission that "this matter has been a frequent source of correspondence between this company and the Southern Railway Company since 1900; that during this time frequent complaints have been made to this company by the Southern Railway Company of its failure to make schedule time at Selma," and the Atlantic

94 Coast Line furnished the commission with copies of daily reports of the arrival of train No. 39 at Selma from August 1, 1903, to December 10, 1903, showing an average daily delay in the arriving time of this train at that point of thirty-four minutes. From these reports it appears that train No. 39 was more than thirty minutes late on arriving at Selma sixteen times in the month of October, and twenty-eight times during the period from October 26th to December 10, 1903, so that this schedule was practically broken by the Atlantic Coast Line's failure to keep it. On October

11, 1903, the Southern railway changed its schedule on train No. 135 so as to leave Goldsboro at 1:35, instead of 2:05 p. m.; Selma at 2:25 p. m., instead of 3 p. m.; Raleigh at 3:25 p. m., instead of 3:52 p. m., and arrive at Greensboro at 6:35 p. m., as it formerly did, and thus the connection, which is admitted by the Atlantic Coast Line Company to have been the principal outlet for passengers en route from eastern Carolina territory to Raleigh and other Southern Railway points, was broken.

The reason given by the Southern railway for changing its schedule at Goldsboro and Selma, which it had kept for about ten years, was that it was necessary to have more time between Selma and Greensboro, at which last named place train No. 135 was scheduled to make close connection with through Southern Railway trains for the South and West. That in order to make this connection they had to run at too fast a speed, and then often failed. This connection of the Southern railway with its through trains is a most important one — all points on the Southern railway between Goldsboro and Greensboro, and also from the eastern part of the State. Deducting three minutes for each stop between Selma and Greensboro, this last schedule would require the Southern railway to make thirty-eight miles an hour in order to arrive at Greensboro on schedule time.

The reason assigned by the Atlantic Coast Line for its failure to keep its schedule in arriving at Selma on No. 39 was that
95 this is a through passenger train carrying mail and express from New York to Jacksonville, and that in some instances the northern connections failed to deliver the train at Richmond on schedule time, and that there was usually added to this train one or more extra express cars, making ten or more cars in all in the train; and that the increase of business along the line from Richmond to Selma made it necessary to consume more time at the various stops. The speed of this train is reported by the Atlantic Coast Line to the commission to be between Richmond and South Rocky Mount 29.63 miles per hour. Deducting arbitraries at Petersburg, Emporia, Weldon and Rocky Mount proper, the speed is 32.22 miles per hour. From South Rocky Mount to Selma, without deducting arbitraries, the speed is 30.75 miles per hour. Deducting the time lost by meeting two superior passenger trains the speed is 34.16 miles per hour.

Admitting that the connection at Selma with the Southern Railway local passenger train, No. 135, was the principal outlet from eastern Carolina for Raleigh and other points on the Southern railway, the Atlantic Coast Line by way of exception, insists that order of this commission requiring the Atlantic Coast Line to make this connection at Selma is unreasonable, because this company is already affording ample and sufficient accommodation from the East to Selma and points on the Southern railway by means of the following trains:

1. Train No. 1, from Rocky Mount to Wilmington, leaving Rocky Mount at 5:45 a. m. and arriving at Goldsboro at 6:50 a. m., and

there connecting with Southern railway's local passenger train, No. 107, from Goldsboro to Greensboro, leaving Goldsboro at 6:50 a. m., arriving at Selma at 7:40 a. m., Raleigh at 8:40 a. m., and at Greensboro at 11:59 a. m. This Atlantic Coast Line train furnishes very good service to Rocky Mount, Wilson and all points between Rocky Mount and Goldsboro by connecting with one of the two local passenger trains operated by the Southern railway be-
96 tween Goldsboro and Greensboro, but it does not afford any facilities for passengers from Kinston, Greenville, Washington, Plymouth and Parmele, unless such passengers would leave their homes on the early morning of the day before in order to reach Rocky Mount; nor to passengers from Norfolk, Hobgood, Tarboro, Spring Hope and Nashville, unless they would leave their homes the evening of the day before to reach Rocky Mount. In other words, this train does not connect with any one of the branches of the Atlantic Coast Line which center at Rocky Mount.

2. The trains from Norfolk and Richmond make close connection at Goldsboro and Selma with the night train on the Southern railway for Raleigh and all points west.

It is true that the Atlantic Coast Line operates train No. 103, from Norfolk to Goldsboro, leaving Norfolk at 4 p. m., Hobgood at — p. m., Tarboro at 7:27 p. m., and arriving at South Rocky Mount at 7:59 p. m., and leaving South Rocky Mount at 8:02 p. m., and arriving at Goldsboro at 9:25 p. m. This train serves passengers between Norfolk and Goldsboro. It is also true that the Atlantic Coast Line operates a train, No. 51, from Richmond to Smithfield, leaving Richmond at 4:10 p. m. and arriving at South Rocky Mount at 8:10 p. m., and leaving Rocky Mount at — p. m., and arriving at Selma at 9:45 p. m. This train serves the territory from Weldon to Selma. These trains make connection with Southern Railway train No. —, running from Goldsboro to Greensboro. The train of the Southern railway with which these trains connect is a mixed or accommodation train, primarily a freight train with passenger coaches attached, not suited for local service, by reason of its being a night schedule as well as its being a very slow schedule. The schedule on this train seems to be about fifteen miles per hour. It does local car-load work.

3. Train No. 39, which is due at Selma at 2:50 p. m., connects with accommodation train No. 183 on the Southern railway at Selma, which is scheduled to leave Selma for the west at 3:25 p. m.
97 This latter train is a local freight train with caboose attached, and not adapted to doing passenger service.

4. One other train relied on is No. 102, Atlantic Coast Line, which leaves Goldsboro for Norfolk at 7:30 a. m., and makes close connection at Hobgood with No. 58, the Atlantic Coast Line's train from Kinston to Weldon, and this train, No. 58, leaves Kinston, as stated above, at 7:30 a. m., and arrives at Weldon at 11:10 a. m., and connects at Weldon with the Seaboard Air Line for Raleigh and Durham and points west of Durham. This affords certain facilities for

reaching Raleigh and Durham; and if the Seaboard Air Line train from Portsmouth to Atlanta arrives at Henderson on schedule time, and if the Seaboard Air Line train from Henderson to Durham arrives at Durham on schedule time, it would also afford facilities for reaching all points on the Southern railway west of Durham. The objection to this route is that it is further from the greater portion of the Atlantic Coast Line territory, and, therefore, the expense is greater and the time longer, and there is more or less uncertainty of the connection at Durham. It is admitted that the usual route of travel from this territory was by South Rocky Mount and Selma. It is practicable to extend the run of the train on Plymouth branch to Selma. The distance from Plymouth to South Rocky Mount is sixty-eight miles and from South Rocky Mount to Selma is forty-two miles. This train arrives at South Rocky Mount at 10:35 a. m., and lies over there until 3:55 p. m. There is no force in the suggestion that if this train, instead of leaving South Rocky Mount for Plymouth at 3:55, as the schedule now is, it would leave at 4:20 p. m., and that thereby the connection, which is now made by means of this branch with the Weldon and Kinston branch at Parmele, which in turn connects with the Atlantic and North Carolina at Kinston would be broken,
98 for the reason that the arriving time of the Weldon and Kinston branch at Kinston is 6:45 and the leaving time of the Atlantic and North Carolina at Kinston for Goldsboro is 7:37. There is, therefore, a margin of forty-eight minutes between the arriving time of the Atlantic Coast Line and leaving time of the Atlantic and North Carolina at Kinston.

It is also practicable to extend the run of the train on the Nashville branch from South Rocky Mount to Selma. The distance from Spring Hope to South Rocky Mount is twenty miles, and this train arrives at South Rocky Mount at 12:10 p. m., and lies over there until 4 p. m., when it returns to Spring Hope. It is claimed by the Atlantic Coast Line Company that the engine and crew on the train, except the baggage master, are engaged in switching all the time that they are at Rocky Mount.

There is within the territory served by these branch lines approximately 400,000 inhabitants. The report of the Atlantic Coast Line Company to this commission for the fiscal year ending June 30, 1903, shows net earnings from operation in North Carolina amounting to $1,942,116.63; and that there was a surplus of $1,293,983.54 after paying interest on its debts and 5 per cent. dividends on its stock, both common and preferred, from the net earnings of the company's entire line. On a mileage basis this will show that there was a surplus of net earnings in North Carolina for that year of approximately $324,493.

The commission is of the opinion that the facilities given heretofore by the Atlantic Coast Line Company to the traveling public should not be lessened; that the connection furnished passengers from the Washington branch, the Norfolk and Carolina branch, the Plymouth branch and the Nashville branch with No. 135, Southern

Railway passenger train at Selma, and also for all points between Rocky Mount and Selma, for nearly ten years should be restored; that if this cannot be done by the Atlantic Coast Line train No. 39, as formerly, on account of this train being heavier, containing usually one or more extra express cars, and in all usually ten
99 or more cars, and on account of increase in business between Richmond and Selma, which necessitates longer stops, then other facilities should be furnished by the Atlantic Coast Line Company; that this connection, which was the principal outlet for passengers from eastern Carolina to Selma and other Southern Railway points for the last ten years, instead of being abandoned should be made permanent and certain, and that this result be accomplished by carrying out the order heretofore made in this court. It is ordered, therefore, that the exceptions be, and they are hereby overruled.

FRANKLIN McNEILL, Chairman.

NORTH CAROLINA,
Wake County, City of Raleigh.

Before the North Carolina Corporation Commission.

In the Matter of the Schedule and Connection of Trains of the Atlantic Coast Line Railroad Company and the Southern Railway Company at Selma.

Notice of Appeal from the Order Made and the Order Overruling the Exceptions of the Atlantic Coast Line Railroad Company.

Whereas, on the sixteenth day of January, 1904, the North Carolina Corporation Commission made an order directing that the Atlantic Coast Line Railroad Company should make connection at Selma, N. C., with the train of the Southern Railway Company leaving that town about 2:25 p. m., and if necessary to make said connection, requiring the said Atlantic Coast Line Railroad Company to put on and operate an additional train for that purpose, and

Whereas, within the time allowed by law the Atlantic Coast Line Railroad Company filed exceptions, five in number, to said order, and upon the hearing of said exceptions produced evidence in support of the same, and

Whereas, on the thirteenth day of February, 1904, the said North Carolina Corporation Commission overruled each and all of
100 the said five exceptions to the end that the order made by it on the sixteenth day of January, as aforesaid, should be put in effect, and

Whereas, the Atlantic Coast Line Railroad Company desires to take an appeal from the said orders of the North Carolina Corporation Commission to the superior court, as is provided for by law, and

Whereas, the said Atlantic Coast Line Railroad Company believes and avers that there is error in the findings of the fact made and in the conclusions of law reached by the said, The North Carolina Corporation Commission in their said order requiring said connection and in their order overruling the said exceptions and the said Atlantic Coast Line Railroad Company desires that all the issues of fact as well as law raised by the said orders and the exceptions thereto be passed upon by a court of competent jurisdiction.

Now therefore, for the purpose aforesaid, the Atlantic Coast Line Railroad Company hereby prays an appeal from the said orders of the said North Carolina Corporation Commission to the superior court to the end that all issues of law and fact involved in the said orders and exceptions thereto may be tried *de novo*, and the said Atlantic Coast Line Railroad Company herewith tenders a bond for the payment to the North Carolina Corporation Commission of all such costs and damages as may be recovered against the said railroad company upon said appeal.

And the said Atlantic Coast Line Railroad Company is ready and willing to pay all proper costs and charges for making out the transcript of this appeal; and is ready and willing to do and perform all other acts necessary and proper to perfect its said appeal.

This February 13, 1904.

(Signed) DAVIS & DAVIS,
(Signed) POU & FULLER,
Attorneys for the Atlantic Coast Line Railroad Company.

101 STATE OF NORTH CAROLINA on the Relation of THE NORTH Carolina Corporation Commission
against
THE ATLANTIC COAST LINE RAILROAD COMPANY.

Whereas, the North Carolina Corporation Commission, by an order dated January 16th, 1904, ordered the Atlantic Coast Line Railroad Company to furnish transportation for passengers from Rocky Mount to Selma after 12:50 p. m. and by or before 2:25 p. m. each day; and,

Whereas, the said Atlantic Coast Line Railroad Company duly filed exceptions to the said order, which said exceptions were overruled by the said corporation commission; and,

Whereas, the said Atlantic Coast Line Railroad Company desires and intends to appeal from the said order of the said corporation commission to the superior court of the State of North Carolina and to that end to give the undertaking required by the statute;

Now, therefore, we, the Atlantic Coast Line Railroad Company as principal and W. N. Royall and John F. Divine as sureties do undertake, pursuant to the statute, that the said Atlantic Coast Line Railroad Company shall pay all such costs and damages as may be

awarded or recovered against it upon such appeal, not exceeding the sum of five hundred dollars.

Dated this 13th day of February, A. D. 1904.

ATLANTIC COAST LINE R R. CO.,
By J. R. KENLY, 4th Vice-President.
W. N. ROYALL. [SEAL.]
JOHN F. DIVINE. [SEAL.]

STATE OF NORTH CAROLINA, }
New Hanover County. }

W. N. Royall and John F. Divine, being sworn severally
102 and each for himself, deposes and says, that he is a resident of the State of North Carolina, and is worth double the sum specified in the above undertaking over and above all his debts and liabilities and exclusive of property exempt from execution.

JOHN F. DIVINE.
W. N. ROYALL.

Sworn and subscribed to before me this 9th day of February, A. D. 1904.

ROBERT SCOTT,
[SEAL.] Notary Public.

I, H. C. Brown, clerk of the North Carolina Corporation Commission, do hereby certify that the foregoing is a full, true and perfect transcript of the record in the case of State of North Carolina on the relation of the North Carolina Corporation Commission vs. The Atlantic Coast Line Railroad Company.

Witness my hand and official seal this 20th day of February, 1904.

H. C. BROWN,
Clerk North Carolina Corporation Commission.

(Endorsed:) Transcript of record. Received, filed and docketed February 23, 1904. W. M. Russ, C. S. C. By V. Royster, D. C.

Order Setting Case Down for Trial.

February Term, 1904.

Before Hon. George H. Brown, Jr., Judge Presiding.

It is ordered by the court that this case be set for trial for first case for first Monday of April term, 1904.

Trial, etc.

And now, at a term of the superior court, begun and held for the county of Wake, at court-house in Raleigh, on the 7th Monday after the 1st Monday of March, it being the April term, 1904, be-
103 fore the Honorable George H. Brown, Jr., judge presiding, in obedience to the order setting this case down for trial, come

the parties aforesaid, by their said attorneys, and, thereupon, the following jurors, to-wit: Charles A. Liles, C. R. Scott, C. B. Lyon, C. H. Weathers, Reuben Cole, W. E. Clarke, F. M. Ferrell, J. B. Dean, D. R. Byrum, Joe Bland, W. D. Howell and William Nowell, being chosen, tried, sworn and empanelled to try the issues joined between the parties for their verdict find the issues submitted to them as follows, to-wit:

Issues—Verdict.

NORTH CAROLINA,
Wake County.

In the Superior Court, April Term, 1904.

THE NORTH CAROLINA CORPORATION COMMISSION
against
THE ATLANTIC COAST LINE RAILROAD COMPANY.

1. Is it practicable for train No. 39 of the Atlantic Coast Line railroad, due to arrive at Selma at 2:50 p. m., to make connection at Selma with train No. 135, westbound, of the Southern railway, due to leave Selma at 2:25 p. m.?

Answer. No.

2. Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return? And if so, what would be the additional expense?

Answer. No.

3. Is it practicable to make said connection by the use of the Spring Hope train, and if so, what would be the additional expense?

Answer. No.

4. In order to make such connection would defendant company have to run an additional train on its main line from Rocky Mount to Selma?

Answer. Yes.

104 5. Is it practicable for said train to safely run the schedule prescribed in plaintiff's order, having due regard to the number of trains and number of stops, on defendant's main line from Rocky Mount to Selma?

Answer. Yes.

6. What would be the daily cost of operating such train from Rocky Mount to Selma and return?

Answer. $40.00.

7. What would be the probable daily receipts from such train?

Answer. $25.00.

8. Is it reasonable and proper that, for convenience of the traveling public, the defendant company should be required to make such connection?

Answer. Yes.

Motions.

Motion by defendant for judgment on the verdict.
Motion by defendant for judgment *non obstante verdicto.*
Motion to set aside the verdict on the last four issues.
Motion to set aside the verdict upon the several issues is denied. Defendant excepts.

Whereupon, judgment is rendered by the court and entered of record in said cause as follows, to-wit:

Findings and Order and Judgment. Filed May 11, 1904.

WAKE COUNTY:

Superior Court, April Term, 1904.

STATE OF NORTH CAROLINA *ex Rel.* NORTH CAROLINA CORPORATION Commission
against
ATLANTIC COAST LINE RAILROAD COMPANY.

The jury having responded to the several issues, the cause came on to be heard upon the motions of plaintiff and of defendant
105 for judgment upon the issues. In addition to the facts found by the jury in response to the issues submitted, certain facts were admitted.

The schedules of the defendant company and of the Southern Railway Company and Seaboard Air Line were admitted in evidence and also as established acts in the cause for the purpose of showing the various routes and railroad connections eastern North Carolina to Raleigh and points west; and also for purpose of showing the established connections between trains on defendant's road and the Southern railway at Goldsboro and Selma, whereby passengers leaving Rocky Mount and other points on defendant's line can go west.

The city of Goldsboro is on Southern railway, 20 miles east of Selma, and according to these schedules there are three passenger trains daily from Rocky Mount to Goldsboro on defendant's road, two of which, when on time, make close connection with Southern railway trains going west, one in early morning and one at 9.40 at night. It is admitted by these schedules that defendant company runs four passenger trains daily each way between Rocky Mount and Selma on its main line, and that one of these trains is scheduled to leave Rocky Mount 8.10 p. m. and to arrive at Selma about 9.50 p. m., about one hour before Southern railway train is scheduled to leave for points west.

With the exception that the afternoon connection between defendant's train 39 and the train No. 135 of Southern railway at Selma does not now exist, it is admitted that in all other respects defendant furnishes ample facilities for transportation of passengers on its lines. The afternoon connection at 2.50 p. m. between defendant's train 39 and Southern railway train 135 existed for past ten years. It is admitted that No. 39 is a through train from Richmond to points in Florida and is dependent on northern connections at Richmond which frequently delay departure of 39 from Richmond, whereby No. 39 in the past twelve months has failed very frequently to arrive at Selma in time to connect with
106 No. 135. It appears from the findings of the corporation commission that (presumably under section 21 of the act creating the commission) the commissioners investigated that connection and found as a fact that it is not practicable for defendant company to maintain that connection with existing train 39, as it is so frequently behind schedule. The Southern Railway Company changed its schedule so No. 135 is now due at Selma at 2.25 p. m. The schedule of No. 39 remains unchanged. From the findings of fact by the jury it appears that defendant company cannot make close connection at Selma with 135, Southern railway train, without putting on its main line an additional train from Rocky Mount to Selma and return.

Upon these facts and the issues as answered by the jury the defendant contends:

1. That the corporation commission has no power under the act of the General Assembly to compel defendant to operate an additional train from Rocky Mount to Selma and return for the sole purpose of connecting closely with another railroad company's train.

2. That the General Assembly of North Carolina has no power itself to compel defendant to operate such additional train at a loss, the fact being admitted that defendant is now operating four trains daily each way between same points, and the defendant contends that the exercise of such power would be in violation of 14th amendment Federal Constitution.

I am of the opinion:

That section 1957 of Code, sub. div. 9, gives to the railroad companies the right themselves "to regulate the *time* and manner in which passengers and property shall be transported," subject to the legislative directions that each railroad company shall run one passenger train at least each way over its line every week day. I have been unable to find anything in the act creating the corporation commission, or in any other act, that directly or by necessary
107 implication repeals such section of the Code. I am forced to the conclusion as matter of law that the General Assembly has not conferred on the commission power to require one railroad company to operate an additional train on its line for the sole purpose of making a close connection with the train of another railway company, however convenient such connection may be. I think

the powers conferred upon the commission and enumerated in the 26 sub-divisions of section 2 of the act do not confer such authority. Section 21 gives the power to do just what was done in respect to trains 39 and 135, viz., that the commission might investigate the connections existing at Selma between those trains. Having decided that better and closer connections between those trains was not practical, I think the commission exhausted the power conferred by legislature.

It is unnecessary that I consider defendant's second contention.

Let the order appealed from be reversed and costs taxed against plaintiff and defendant go without day.

G. H. BROWN, JR., Judge, etc.

Appeal, etc.

Plaintiff excepts and appeals. Notice waived. No bond required. The entire evidence will be sent up if desired.

G. H. BROWN, JR., Judge.

Filed May 11, 1904. Minute G, pages 50 and 51.

Plaintiff's Case on Appeal.

NORTH CAROLINA, Wake County.

Superior Court, April Term, 1904.

STATE OF NORTH CAROLINA on *ex Rel.* CORPORATION COMMISSION, Appellant,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Appellee.

This was an appeal by the defendant (appellee herein) above
108 named from an order of the said North Carolina Corporation Commission, which said order appears in the transcript on appeal, tried before his honor George H. Brown, Jr., at the April term, 1904, of the superior court of Wake county.

The record sent up by the corporation commission upon said appeal is set out in the transcript sent by the clerk of said court to the Supreme Court.

The plaintiff asked that the following issues be submitted to the jury:

1. Is it practicable for The Atlantic Coast Line Railway Company, the defendant in this case, to make connection with the trains on the Southern railway going west, by 2:40 p. m.?

2. Is it reasonable that they should make such connection?

3. Would the traveling public be convenienced and benefited by said connection?

The defendant asked that the following issues be submitted to the jury:

1. Is it practicable for train No. 39 of the Atlantic Coast Line railroad, due to arrive at Selma at 2:50 p. m., to make connection at Selma with train No. 135, westbound, of the Southern railway, due to leave Selma at 2:25 p. m.?

2. Is it practicable for train No. 65, known as the Plymouth train, of the Atlantic Coast Line Railroad Company, to make connection with Southern train No. 135, westbound, at Selma at 2:25 p. m.?

3. Is it practicable for train No. 68 of the Atlantic Coast Line, known as the Spring Hope train, to perform all the service now required of it, and in addition thereto connect at Selma at 2:25 p. m. with the Southern train westbound, No. 135?

4. What would be the daily cost of running a train from Rocky Mount to Selma and back between the hours of one and four o'clock p. m.?

109 5. Would the revenue derived from the increased travel (if there be any increase) over the Atlantic Cost Line because of said additional train, equal the additional cost of running the same?

6. Would the increased travel, if any, caused by said additional train, be sufficient to pay the cost thereof and yield to the Atlantic Coast Line a reasonable profit upon the operation of said train?

7. Is the route from most points on the Atlantic Coast Line railroad in northeastern North Carolina, via Weldon to Raleigh and Durham, and points on the Southern railway west of Durham, practically as quick and as cheap as the route via Selma would be if the connection ordered by the corporation commission were made?

8. Would it be practicable for a train of the Atlantic Coast Line Railroad Company, leaving Rocky Mount at 1:00 or 1:10 p. m., to make certain connections with the Southern railway at Selma at 2:25 or 2:40 p. m.?

9. Will it be practicable for the Atlantic Coast Line Railroad Company to run an additional or separate train from Rocky Mount to Selma between the hours fixed by the corporation commission in their order?

His honor submitted the following issues:

1. Is it practicable for train No. 39 of the Atlantic Coast Line railroad, due to arrive at Selma at 2:50 p. m., to make connection at Selma with train No. 135, westbound, of the Southern railway, due to leave Selma at 2:25 p. m.?

2. Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return, and if so, what would be the additional expense?

3. Is it practicable to make said connection by the use of the Spring Hope train, and if so, what would be the additional expense?

4. In order to make such connection would defendant com-

110 pany have to run an additional train on its main line from Rocky Mount to Selma?

5. Is it practicable for said train to safely run the schedule prescribed in plaintiff's order having due regard to the number of trains, and number of stops, on defendant's main line from Rocky Mount to Selma?

6. What would be the daily cost of operating such train from Rocky Mount to Selma and return?

7. What would be the probable daily receipts from such train?

8. Is it reasonable and proper that, for convenience of the traveling public, the defendant company should be required to make such connection?

Plaintiff excepted to the issues submitted, but the same having been submitted, asked that the following additional issues be submitted also, viz:

1. What would be the cost of extending the run of the train from Spring Hope to Selma?

2. What would be the cost of extending the run of the train from Plymouth to Selma?

3. Is the surplus net revenue derived by the defendant from its entire passenger business in North Carolina, after paying operating expenses, fixed charges and a reasonable dividend, more than sufficient to pay the expenses of the train ordered by the plaintiff?

The court declined to submit the additional issues, as asked by plaintiff, to which plaintiff excepted.

The plaintiff introduced the following testimony:

NORTH CAROLINA,
Wake County.

Superior Court, April Term, 1904.

STATE *ex Rel.* THE NORTH CAROLINA CORPORATION COMMISSION
against
ATLANTIC COAST LINE RAILWAY.

H. J. HEILIG, witness for plaintiff, being duly sworn, testified as follows:

111 Direct examination by Mr. WOODWARD:

Q. Where do you reside?
A. Raleigh.
Q. Have you ever served as an engineer?
A. Yes, sir.
Q. On what railroad?
A. On the Richmond and Danville and on the S. A. L.
Q. For how many months?
A. On the S. A. L. eighteen and a half years.
Q. You are travelling engineer?

A. Traveling engineer for 3 years and ten months.

Q. You never were engineer on the Coast Line?

A. No, sir.

Q. With an ordinary passenger coach engine with 2 passenger coaches and a baggage coach on a straight, smooth track, what schedule can safely be made?

A. You can maintain, I suppose, 45 or 50 miles an hour readily.

Q. And with a run of 42 miles with 7 ordinary stations within what time ought that to be safely made?

A. I should say an hour and 25 or 30 minutes under favorable conditions.

Q. A wood-burner—how much wood would it take to make the round trip?

A. That would determine the discretion the man used in operating his engine.

Q. With a prudent engineer?

A. I should say a cord and a half of wood in 42 miles.

Q. Three cords the round trip?

A. Yes, sir.

Q. With 5 stops to make in that distance what difference would that make?

A. That would scale it down to 1 hour and 20 minutes.

Q. With three cords of wood for the round trip?

A. Yes, sir.

Q. How much oil would it take?

A. With proper discretion I suppose half a pint of cylinder oil would run the round trip.

Q. What is that worth?

A. It varies according to quality. It ranges anywhere from eighteen to thirty-five cents a gallon; it depends upon the quality.

112 Q. How much water would it take?

A. From 5 to 6 thousand gallons; it depends upon the size of the engine.

Q. An engine 17 by 24, five foot wheel?

A. That is an economical size of engine—it ought to do it with 5,500 gallons the round trip.

Q. What would the water cost the company, if you know?

A. There is an estimate fixed—of course it don't apply to all cases—at about .12½ per thousand. In determining the expense of water would determine how it was pumped, the fuel consumed and the labor required to pump it.

Q. How many men on the crew would be required for that run?

A. For the maintenance of the train four would be necessary. Of course the baggage master and expressman, the fireman, the engineer, the conductor and flagman *is* absolutely needed.

Q. What is regarded by a railroad as a safe run for a crew—how many miles?

A. That determines upon the work they have to do, usually 100

miles or less constitutes a day's work, in freight service, 133 or less in passenger service. It runs in excess of that as conditions may require. The fixed day's work is 100 miles or less.

Q. Do you know about the rules of the Coast Line?

A. No, sir.

Q. You have never worked on the Coast Line?

A. A few trips from Selma to Pembroke during the burning of the bridge at Haw river.

Q. Is 156 miles regarded among railroad men as an unusual run for a passenger train?

A. No, sir—the run from here to Munroe on the S. A. L. is 150 miles and from here to Charlotte 174.

Q. Is that made by the crew every day?

A. No, sir; they go south one day and north the next—174 to Charlotte, they reduced that to Munroe which makes it 150.

Q. Under ordinary conditions what you regard the wear and tear of trains running 80 miles a day with 2 passenger trains and
113 a baggage car—have you made an estimate?

A. No, sir; that would determine largely on the local care that was taken of the train—that is a difficult problem.

Q. What is regarded as the life of an engine?

A. That determines the usage.

Q. What would be the life of an engine running 156 miles per day?

A. With proper care I suppose 20 years—of course she has got to have local repairs.

Q. Are you in any position to estimate what would be the cost a year to repair an engine running 156 miles per day—a new engine?

A. That would determine the man who was operating it.

Q. Can you give us an estimate of what it would cost?

A. No, sir; I cannot correctly.

Cross-examined by Mr. POU:

Q. Did you ever run a passenger train between Greensboro and Selma?

A. No, sir.

Q. You were not on that run except when a train had to be detoured around that way?

A. No, sir.

Q. Your estimate of 4 men to the train did include the baggageman or 1 brakeman?

A. They usually go with the train.

Q. A train would be improperly managed unless it had an engineer, a fireman, a conductor, flagman, baggage master and brakeman?

A. Well those are necessary in a very great measure.

Q. And the rules require that number—6 men?

A. I do not think the rules on the S. A. L. prescribe any specific

number. I think a train ought to be manned if you expect reasonable service.

Q. If a track is a crowded track it would not be prudent railroading to send a train out with a less number?

A. You ought to have a man there to play each man's part, whenever you depend upon someone else to protect a train you are going to have trouble.

114 Q. Employees of a railroad are usually paid by the day, if they run over a certain number of miles they are extra pay—that is the basis isn't it?

A. No, sir; they are paid by the mile as a rule. When they are on duty in excess of a certain number of hours which would constitute a day's work they get over-time.

Q. But the rule for payment of an engineer is for 133 or less—he is paid $3.25 per day?

A. He is paid $4.00 per day if he only runs ten; the company can run him 133⅓ if there is a run that long, and if they run him 10 they agree to pay him $4.00 per day.

Q. Now if this run is 84 miles whether he would run it in 4 hours or in 24 he would get $4.00?

A. Yes, sir.

Q. And the fireman, baggage master and conductor are paid on the same basis?

A. Yes, sir.

Q. They are not paid the same amount, but they are paid on that basis?

A. Well if this man's terminal, say Rocky Mount, if he goes to Selma and back to Rocky Mount and gets off his engine and puts his engine away he gets his $4 per day.

Q. And the same thing applies to all, they pay them by the mile?

A. If a run should be required which would be back and forward more than 130 miles that $4 would be paid and so much excess over.

Q. From Plymouth to Selma is 111 miles and back; if an engineer was required to go 111 miles back and forward every day he would be entitled to be paid for 2 days' work?

A. It depends upon the time that intervened from his arrival at the station terminal until he left there. He would be paid actual mileage and over-time.

Q. Your statements are very interesting about repairs to engines. Prudent management of an engine makes it to go to the shops at the end of every run for inspection?

A. Yes, sir.

Q. It is necessary that after an engine goes out and comes
115 back it is over-hauled?

A. It should be inspected and local repairs made.

Q. If that is not done its life will be shorter? If those repairs

are neglected it reduces the life of an engine and endangers the passengers?

A. Yes, sir.

Q. Your estimate of the life of an engine at 20 years is based upon the fact that it is carefully run, has local repairs when necessary and has no collision?

A. Yes, sir. Of course you can only answer those things approximately. You might take a boiler and use it and keep foreign matter well excluded and that boiler might last 40 years and again it might blow up in 10 years and some foreign matter might get to it which would depreciate it.

Q. And one thing which would injure the life of an engine would be muddy water, etc., and there are casualties of the business which may occur?

A. Yes, sir.

Q. And if there should be a wreck there is no accounting for that?

A. Collisions occur on crowded tracks and where you come in contact with numerous trains and in your effort to think of one thing you forget another.

Q. And those things tend to reduce the life of an engine?

A. Yes, sir.

Q. Your estimate that they could run from Rocky Mount to Selma in 1 hour and 25 to 30 minutes is based upon the idea that they would have a clear track except for stops?

A. Well you might—a connection might be very close, a train of superior class might arrive first, they may make preparations to receive you in a side track and get by in a few minutes, but ordinarily if a man take a side track and does it in less than 5 minutes he does it very hurriedly.

Q. If you were to meet 4 trains of superior class and the usual quota of freight trains over which you have the right of way, I will ask you if the slightest delay in any of those trains would make it necessary to take much more time than the time you mention?

A. Yes, sir.

Q. Suppose this railroad extends from Tampa, Fla., to
116 Richmond, Va., this point, Rocky Mount to Selma, being in the northern third, it is not in the majority of cases that it—not an accident when one of them is exactly on time? *A. It—not an accident when one of them is exactly on time?*

A. The speed of that train would determine that very materially?

Q. But you know how they are—they are scheduled to arrive at certain places but other trains having the right of way they do not get in on time?

A. They are delayed as a rule.

Q. When they are delayed on a crowded track the limit 1 hour and a half is a very narrow limit?

A. It is a very short space.

Q. And if any of those trains miss getting there this train has to wait?

A. Yes, sir.

Q. So all those things would tend to throw it out of its time?

A. Yes, sir.

Q. Suppose the jury should find as a fact that on that first track the average number of trains a day was 30, one train for every ¾ of an hour that would be a crowded track wouldn't it?

A. Right much so.

Q. Speaking of freight trains if the jury should find that this train must meet 208 and 212 which are truck trains and that they frequently run each in 5 sections that would mean that those truck trains having the right of way if they were not actually on time and in their side track it would mean that those passenger trains would have to wait until they pass.

A. They would have to wait until they came by or until they received orders.

Q. About the wood, your idea is that 3 cords would carry a train there and back?

A. Yes, sir.

Q. That would mean that it was good wood—what kind?

A. Average pine wood.

Q. It would have to be picked wood?

A. Good sound wood.

117 Q. What is the relation in fuel power of a cord of wood and a ton of soft coal?

A. I reckon about 1½ to 1.

Q. The coal would be 1 and the wood 1½?

A. Yes, sir. The quality determines those things largely.

Q. The amount of fuel consumed depends largely upon the speed of the train?

A. A man can run an engine fast and use fuel economically. A man can be extravagant or he can be economical just as he determines that.

Q. Extravagance consists in putting on such draught to get speed that it blows the coal out?

A. He won't accomplish any more in maintaining speed, and on the other hand he is losing in fuel and losing in water.

Redirect by Mr. WOODWARD:

Q. If an engineer is paid $3.90 per day for 12 hours' work, would it make any difference to him whether he ran 100 miles or 150, and would he get any more if he was paid by the day for 12 hours' work?

A. No, sir.

Q. Counsel asked you about the vegetable trains having the right of way; do you know anything about that on the Coast Line?

A. No, sir; not a thing.

Q. Where the engine-rs are employed by the mile and receive pay according to the number of miles they run if that is fixed on a

basis of 133 miles and they run 150 how much more pay do they get?

A. He would be paid for actual mileage.

Q. What is it an hour?

A. It ranges from thirty-five cents to possibly forty cents per hour.

Q. You say 158 miles can be easily run?

A. That is a pretty good day's work.

Q. But it is done on the road—is it regarded as an excessive run?

A. No, sir; not to the extreme; those conditions present themselves, and circumstances cannot be controlled in certain distances.

Q. What is the distance from Richmond to Raleigh?

A. I think about 158 miles.

118 Q. One crew runs that every day?

A. I don't know.

Q. The engineer I mean?

A. I think probably they do.

Recross-examination by Mr. JAS. H. POU:

Q. 158 is considerable above the standard—the standard is 133?

A. Yes.

Q. And 158 is, as you say, a pretty good day's run?

A. Yes, sir.

Q. Can a crew stand that every day, say, every day in the week?

A. Yes, they do stand it.

Q. Isn't there usually an arrangement made by which they can lay over certain days when their run is about standard?

A. There is hardly any provision about a man's laying over unless he requests to get off to repair physical nature.

P. D. GOLD, witness for plaintiff.

Direct by Mr. WOODARD:

Q. Where do you reside?

A. Wilson, N. C.

Q. You are a minister of the gospel?

A. Yes, sir.

Q. Of what churches are you pastor?

A. One at Winston, one at Tarboro, one about a mile of Rocky Mount, one at Durham, one here.

Q. How often do you go to Durham?

A. Monthly.

Q. Are you a minister of the Primitive Baptist church?

A. Yes, sir.

Q. You go to Durham regularly once a month?

A. Yes, sir.

Q. Before the connection at Selma was broken what was your method of reaching Durham, what time did you leave Wilson?

A. Two o'clock Friday afternoon and get to Durham at 5 o'clock—two days' meeting, Saturday and Sunday.

Q. Since the Selma connection has been broken what inconvenience, if any, have you been subjected to in meeting your appointments at Durham?

119 A. I could go down and stop at Selma Friday night, leave home Friday evening about 8 or 9 o'clock at night and go there and lie over until the next morning or get up early Saturday morning; for instance, this morning I got up at 4 o'clock, had breakfast at 5 and got on the train that passes there just before 6.

Q. In winter what time do you have to get up at Wilson?

A. Four or half after.

Q. What time does the sun rise in winter—how far is that beyond daybreak?

A. An hour or more before day.

Q. What time do you get to Durham?

A. If I leave home Saturday morning I get to Durham about 10 o'clock.

Q. Do the trains stop long enough to get breakfast at any point between Wilson and Durham?

A. No, sir; I get into Durham at 10 or a little after.

Q. Have you gone beyond Durham since the connection was broken?

A. I think not.

JUDGE: What time can you leave Durham and get home?

A. Leave Durham Sunday afternoon and get home at 10:30 Sunday night. Leave Durham Monday morning at 9:40 and get to Wilson at 1:16, if both trains are on time, if not, get there at 3 if the Coast Line train is on time.

Q. You can make a round-trip in a day then?

A. Yes, sir, getting home at nearly 11 at night.

Cross-examination by Mr. POU:

Q. That occurred once a month?

A. Yes, sir.

Q. There are other trains that could go to Durham to and from Wilson, are there not?

A. I could go to Selma at night and get to Durham at 2 or 3 o'clock next morning, going on a mixed train.

Q. That is, you leave Wilson at 6 o'clock now, the sun is nearly one hour high, and get to Durham at 10:25, or you can leave home after supper, 8 or 9 o'clock, and get to Durham in the night. Coming back, you leave Durham at 4 o'clock in the morning and get to Wilson by breakfast?

A. I think so—I never tried it.

120 Q. Or you can leave Durham at 10 o'clock and if the train is on time get to your home at dinner?

A. Yes, sir.

Q. Or you can leave Durham at 4 o'clock and get to your home at nine o'clock, or about bed-time.

A. Nearly 11—after 10.

Q. By way of Goldsboro is it after 10?

A. 10:20.

Q. That can be done now?

A. Yes, sir.

Q. The train that leaves Wilson at 6 o'clock now formerly left at 6:30 or 6:40, didn't it?

A. 6:20.

Q. That was moved up at the request of the corporation commission and the people of Wilson to keep from breaking the other connection at Goldsboro?

A. It was moved up and the connection is very good at Goldsboro.

Q. For some time this connection at Selma was broken—the morning connection at Goldsboro was broken?

A. Yes, sir.

Q. The Coast Line, in order to give this early morning connection, made its train leave early. Now, except for that change, the Coast Line is running its trains just like it has been running them for ten years?

A. Yes, sir.

Q. There is no complaint of service along the Coast Line?

A. It runs very well for me.

Q. And you know how the people regard the Coast Line—that so far as serving its own territory there is no complaint; you know that the Coast Line is endeavoring to foster truck raising all along its road and send a great number of truck trains—I believe I know gentlemen that made hundreds and thousand — dollars on lettuce and that is being done because the Coast Line is giving them that rapid service, and if that service is interferred with it means absolute loss of that business?

A. I suppose it would be damaged.

Q. Well, things like lettuce and strawberries if damaged are ruined?

A. Yes, sir.

Q. That industry is being developed rapidly in that section?

A. Yes, sir; especially towards Wilmington.

121 Re-direct by Mr. WOODARD:

Q. What time do you leave Wilson?

A. I think the train passes from Richmond at 8:40.

Q. What time would you leave Selma going on that night?

A. I have never tried that. I suppose 10 o'clock.

Q. What time would you get to Durham?

A. Perhaps 2 o'clock. I have never tried it. I don't know.

JAMES R. GASKELL, witness for plaintiff.

Direct by Mr. WOODARD:

Q. Where do you reside?
A. Tarboro.
Q. You are a member of the bar and referee in bankruptcy?
A. Yes, sir.
Q. Do you have occasion to visit Raleigh often?
A. Yes; six or seven times a year.
Q. Prior to the breaking of what is called the Selma connection what were your facilities for getting from Tarboro to Raleigh?
A. I could leave Tarboro at 12:25 and get here at half-past 3 in the afternoon.
Q. What was the fare going that way?
A. It has been some time—my best recollection is $2.80.
Q. Since that connection was broken what are your facilities for getting to Raleigh now?
A. I usually leave home at 9:20 in the morning.
Q. What is the fare from Tarboro?
A. I came up on Saturday and my impression is it cost me $5.05 and that included a seat in the Pullman—that is $4.55 via Weldon; coming by Selma is $2.80—that is just the railroad fare.
Q. What other additional expense are you subjected to going to Weldon?
A. .75 for dinner at Norlina. If I leave at 12:25 I can get dinner at home.
Q. What other train is there going from Tarboro?
A. The train leaving at 7:20 in the evening gets to Raleigh between 12 and 2 o'clock.
Q. Have you been that way recently?
A. I have only taken that trip once, that was a month or six weeks ago.
122 Q. What time did you get to Selma?
A. I couldn't say.
Q. How long did you stay there?
A. I couldn't say.
Q. You only made that once?
A. Only once. I shall not make it any more; it is inconvenient getting here at midnight.
Q. What are the accommodations?
A. Poor on the train.
Q. What kind of a train?
A. Freight train.
Q. Do you remember how long you did stay at Selma?
A. No, sir.
Q. Did you stay in the station?
A. No, sir; we walked around, went over to the hotel and went up the street.
Q. Do you know of any of your people being subjected to any

additional expense and inconvenience by this Selma connection being broken?

A. A party going to Ashville last summer at a Daughters of the Confederacy meeting, we got left at Selma and remained there—perhaps two or three days after this connection was off. We didn't know about it until we got there, and we waited until night and we left on the night train. Our idea was to go right on through and stop in Greensboro. Some of our party were going to the commencement.

Q. What time did you leave home?

A. 12:20.

Q. What time did you reach Selma?

A. Half-past 2 or nearly 3; I don't remember.

Q. You don't remember whether the Coast Line was on time that day or not?

A. No, sir; I do not. It is difficult to know when the Coast Line is on time.

Q. Before this connection was nominally broken, state whether it was regarded by the travelling public as uncertain?

A. It was considered uncertain.

Q. Why was it regarded as uncertain?

A. The southbound train on the Coast Line was usually late. It was not the fault of the Southern.

Q. The day that you and the party of ladies missed connection how long did you stay in Selma?

A. From about 3 o'clock in the afternoon until 10 or 11 at night.

123 Q. Did you take a sleeper?

A. No, sir; we could not, because it was full. Some of the ladies did.

Q. If that Selma connection had been made you would have gotten to Greensboro at what time?

A. Half-past 6 that night.

Q. What time did you get to Asheville?

A. Next afternoon.

Q. You were going to take in the commencement exercises at the State Normal school and also going to Asheville?

A. Yes.

Q. You say it is difficult to find at Tarboro when this train is going to make its connection?

A. Yes; they have no connection with the main line, either with the Norfolk — Carolina or the main line. The dispatchers are secondary people.

Q. Young ladies attending the Greensboro schools and young men attending Trinity college and the university, do you know how they reach Greensboro and Trinity and Chapel Hill from Tarboro?

A. No, sir. My daughter was two years at St. Mary's and I had to go with her because I was afraid for her to go by herself—that

was before this connection was broken; that was due to the uncertainty.

Q. Young ladies going to the schools in Greensboro their only way is to go by Selma and spend the night on the train?

A. Or go to Goldsboro and stay all night there.

Q. With the Selma connection restored what time would they leave Tarboro?

A. 12:25 p. m. They would reach here at half-past 3 o'clock and 7 o'clock Greensboro.

Q. As it is now they leave in the day at 12 o'clock—the time that they used to leave before the Selma connection was broken what time would they get here?

A. Midnight.

Q. What time would they get to Greensboro?

A. Next morning about 6 or 7 o'clock.

124 Cross-exmined by Mr. Pou:

Q. The young men going to Trinity or Chapel Hill or Elon or any of those places can go around from Tarboro by Weldon and get there the same afternoon, can't they?

A. I am not familiar with the schedule. I have never travelled on the Seaboard.

Q. It does not connect here, it was broken at the same time the Selma connection was broken, but they do connect at Durham; but if on inspection of these schedules it would appear that these young gentlemen and ladies can get cheap school tickets and go around by Weldon and reach Raleigh or Durham or Chapel Hill or Elon college before the sun sets that day you would not consider they had a great grievance?

A. No, sir.

Q. And if it turns out that this is so and they sell school people at a reduction?

A. Yes, I don't know what the reduction is.

Q. And if the schedule shows that if they go around that way from your town and get to — school they patronize before sunset, then you would be gratified and feel that the grievance was not as great as you thought?

A. Certainly.

Q. You are a business man and know that business men frequently travel at night, and can not a man transact an entire day's business in Tarboro, get his supper, take the train, go by Selma and get to Raleigh at midnight?

A. Yes, sir.

Q. He can leave Raleigh early in the morning and get to Tarboro a little after breakfast?

A. He ought to, but he don't; that connection at Goldsboro is uncertain.

Q. But — it is certain the Coast Line is going to leave Goldsboro there is no doubt about getting from Goldsboro?

A. No, sir; you can get there all right.

Q. You can leave your place after supper, go to Raleigh and get to Tarboro at what time?

A. If we do not make connection we get there at 4:50.

Q. But the connection is always made at one or the other points?

A. Yes, sir.

125 Q. In the territories on the Coast Line is there any complaint about reaching any point on the Coast Line territory from Tarboro?

A. No, sir; there is very good service there.

Q. It is only when you go off to other lines that there is any complaint?

A. Yes, sir.

Q. The Coast Line trains are running practically the same schedule they have run for ten years?

A. Yes, sir.

Q. So the changes that have been made in the Coast Line schedules have been in the line of better service to your people?

A. Yes, sir.

Q. There is no complaint about reaching Wilmington, Norfolk or any point on the Coast Line?

A. No, sir, the complaint is reaching Raleigh. We are compelled to come here and the chief complaint is the difference in fare. It costs me twice as much to come here as it used to.

Q. Now, the Coast Line is making a special offer to develop the truck interests along its lines?

A. I know nothing of it.

Q. The running of trains to Kinston, Plymouth and Washington depends upon the regularity of the trains upon the main line?

A. Yes.

Q. If the train at Rocky Mount is late it throws all the branches out?

A. Yes.

Q. The trains, as you say, on the Coast Line — go to Goldsboro in the morning and Selma at 3 o'clock are run as they have been run for years?

A. Yes, the Coast Line leaves Goldsboro later now than formerly.

Q. And the break in the connection was not done by anything the Coast Line did; it has the same number of trains, so it was not the Coast Line's work?

A. I can not say.

Q. It was due to anything the Coast Line did and not due to the change of schedule?

A. No, sir; the same schedule now was before this break.

Q. This train that you speak of as being not a satisfactory train on the Southern takes a sleeper at Raleigh here and in the

126 summer season takes a sleeper at Goldsboro, and if you had been in the summer season the ladies could have taken a leeper at Selma?

A. Yes, sir. It was a freight train and at every station it was a continual jog, knocking you from one side to the other, and it was not comfortable at all.

Q. But it was a through freight, wasn't it?

A. Yes; it stopped at stations and did local business.

Q. I think you will find that that is a through freight?

A. That might have been.

Q. That is the train that leaves Selma at 10:40 at night?

A. Yes, sir.

Q. That is the train you were complaining of?

A. Yes; it is not the Coast Line. The Coast Line service is very good.

Q. When you were going to Asheville you got there, even though you found the sleeper connection broken, at the same time you calculated—you calculated to lie over in Greensboro, and not knowing of this break you went to Selma and lay over there?

A. We missed a part of the entertainment which we started to get at Greensboro.

Q. Now, if you had known that connection was broken and had gone around by Weldon and taken the afternoon train at Durham you could have gotten to Durham, taken in that commencement and gotten to Asheville. If the Seaboard from Henderson makes connection from Durham you could have made that trip?

A. According to your statements, yes; I have never travelled it.

Q. And you did not know of that route and did not know of the break?

A. Yes, sir.

Redirect by Mr. WOODARD:

Q. You speak about the schedules of the Coast Line not having been changed since the break in the connection. I understood you to say that the connection has been very uncertain for how long?

127 A. For a number of years—we would go with that understanding that we did not know whether we were going to get to Raleigh or not.

Q. That was due to the Coast Line, it was not the fault of the Southern?

A. Yes, sir.

Q. Going by Weldon from Tarboro can you buy a ticket from Tarboro to Raleigh by Weldon?

A. No, sir.

Q. Can you buy one to Greensboro?

A. I can't say.

Q. If you are travelling with ladies or by yourself and check your baggage you can only check your baggage to the point where you buy your ticket?

A. Yes, sir.

Q. And you could only buy your ticket from Tarboro to Weldon

and check your baggage to Weldon and then at Weldon you would have to buy another ticket to Durham?

A. Yes, sir.

Q. Going from Tarboro to Greensboro via Weldon you leave Tarboro in the morning, where would you change?

A. First, Hobgood.

Q. Where again?

A. Weldon.

Q. Where again?

A. I can't say—Henderson.

Q. Then you change again at Durham?

A. Yes, sir.

Q. Would that be a satisfactory schedule?

A. It would not be very satisfactory.

Q. Instead of leaving Tarboro at 12 you would have to leave at 9?

A. Yes, and cost twice as much to go that way.

Q. Mr. Pou asked you about reduced rates for school children; does not that apply when they are returning from Christmas holidays?

A. I think so. That is my impression.

Q. So young ladies going to Raleigh, Trinity or Greensboro it would cost them twice as much and they could not buy a through ticket or check their baggage?

A. Yes, sir.

Q. Mr. Pou asked you about the vegetable production. It is the people, not Coast Line, who are developing this industry?

A. Yes, there is no question about that.

Q. They are not doing it just for the love of the people?

A. No, sir.

Q. You said you didn't know about the vegetable production between Rocky Mount, Charleston, etc.

128 A. Only what I have seen in the newspapers.

Recross-examination by Mr. POU:

Q. Do you know whether there has been any request on the Coast Line to put those tickets by the Seaboard on sale?

A. I don't know.

Q. You don't know whether the people of Tarboro have ever suggested it or asked it?

A. I don't know.

Q. You don't know that the people have ever asked?

A. No, sir; I do not.

Q. If you find that they could get it by request then much of the inconvenience could be removed?

(Objection by plaintiff.)

Judge PHILLIPS, witness for plaintiff, sworn, testified:

Direct by Mr. WOODARD:

Q. Do you live in Tarboro?
A. Yes, sir.
Q. Do you have occasion to visit Raleigh frequently?
A. Quite often.
Q. You are trustee of the university and member of the executive committee which meets in Raleigh?
A. Yes, sir.
Q. Your business interests bring you here frequently?
A. Yes.
Q. Before the Selma connection was broken what were your facilities for getting to Raleigh?
A. Well, the usual route of travel at that time was to take the 12:30 train—it is scheduled at 12:23—and we would go right straight through to Selma, make connection and get to Raleigh a little after 4 o'clock in the afternoon of the same day. That was the schedule that was in effect at that time.
Q. Before it was nominally broken was it a certain connection?
A. It was not so far as I was concerned; I have missed connection quite frequently.
129 Q. When you missed connection what time did you get to Raleigh?
A. On two or three occasions I stayed in Selma and took that night train that gets in between 11 and 12 at night.
Q. Since the connection has been broken what are your facilities for getting to Raleigh now?
A. Well, when we go to Raleigh from Tarboro now we take the Shoo Fly train, Tarboro to Rocky Mount—the 7:20 train in the afternoon—and go through to Selma, or are supposed to go through and make connection at Selma, and at Selma we strike that outgoing train from Goldsboro west and get to Raleigh between half-past 11 and 12 o'clock.
Q. State whether that is a reasonably certain connection from your experience?
A. I can not state whether it is generally so or not—I found it not so about forty days ago.
Q. What was your experience in attempting to get to Raleigh on the occasion?
A. On March 9th, I think court was in session in Tarboro, and it was the end of court and a number of persons wanted to go out from Tarboro to Rocky Mount and westward, and I was among the number, and we got there at Tarboro and took that train and when we got to Rocky Mount we failed to make the connection with that train going to Selma—I suppose it came from Richmond—and one or two gentlemen who were on the cars with me concluded we would go down to Goldsboro and spend the night and several stayed over at Rocky Mount to take the train next morning.

Q. You went to Goldsboro?

A. Yes, sir.

Q. Did you get to Goldsboro in time for the Southern train going to Raleigh?

A. No, sir, we went to Goldsboro for convenience; but I will state that that train which we took was thirty minutes late when we got to Tarboro.

Q. That was a Coast Line train?

A. Yes.

By Judge BROWN:

Q. From Tarboro to Goldsboro is reasonably certain, isn't it?

A. Yes, sir.

130 Q. It gets there before the Southern train leaves, generally?

A. No, sir.

Mr. WOODARD:

Q. Have you missed connection any time since then?

A. With that experience I have stopped it, except yesterday.

Q. How did you get here yesterday?

A. I took the 12:23 train yesterday at Tarboro.

Q. What time did you leave Tarboro?

A. 12:23 in the day, went down to Goldsboro and stayed there until 9:45 and got in here this morning at 12:05.

Q. It took you 12 hours to get from Tarboro to Raleigh. If these trains had made connection at Selma what time would you have reached Raleigh?

A. A little after 4 o'clock, or about 4, leaving Tarboro at 12:25.

Q. So as it was you left at 12 in the day and got here at 12 at night? Does the agent at Tarboro sell tickets from Tarboro to Raleigh via Weldon?

A. No, sir, he does not. I have made the trip three times this year and one of my family have made the trip and on those occasions when I attempted to get baggage checked through to Tarboro and get tickets I have failed, and while I can buy a ticket from Tarboro to Weldon, change cars at Hobgood and at Weldon and check my baggage to Weldon and look out for it there and then from Weldon you buy a ticket for Raleigh.

Q. On that train what time do you have to leave Tarboro?

A. The train that we call the 9:30. That is the most usual route of travel for our people now who want to go to Raleigh on business and who don't want to make a night of it; it costs more to go that way.

Q. What is the difference in the distance and in the cost of a ticket that way?

A. The ticket from Tarboro to Raleigh is $2.85 via Selma; yesterday the agent told me it was $2.80. You can check your bag-

gage through that way and have no difficulty except to get on the right train.

Q. What is the fare via Weldon?

131 A. From Tarboro to Weldon is $1.45 and from Weldon to Raleigh is $3.10, about $4.55.

Q. What is the difference in the distance going that way?

A. The distance from Tarboro to Selma is 106 miles by Goldsboro and by Selma it is about 10 or 15 miles less, I think, and from Tarboro to Weldon is called 45 miles. I meant to say Selma.

Q. I will ask you this, whether or not the inconvenience and expense of getting to Raleigh has not lessened the travel from that section to Raleigh?

A. I know of several instances that have come within my knowledge.

Q. Just tell of those instances that have come within your knowledge.

A. I can't answer that question with absolute certainty, unless I give my opinion. I know there are quite a number of girls at Tarboro and in that section who are in attendance upon the A. and M. college at Greensboro and these female colleges here, and I know I have been approached by several gentlemen in the town of Tarboro——

(Objection by defendant as to what gentlemen said.)

Q. State whether in your judgment the travel to Raleigh has fallen off since changing this connection.

A. I can't answer that question.

Q. State in your opinion whether travel to Raleigh would be increased by the restoring of the Selma connection?

A. I think that the summer schedule would be increased materially by people going to the western part of the State instead of the seashore.

Q. State whether or not in your opinion by reason of the breaking of the Selma connection travel has not been lessened to Raleigh by reason of the failure of that connection.

(Objection by defendant.)

A. I think it has.

Q. Young men and girls going to Chapel Hill, Trinity, the Raleigh and Salem schools, how would they reach those points?

A. They go to Goldsboro and stay the night and start next morning, or rather they did the first of the year.

132 Cross-examined by Mr. DAVIS:

Q. You say that the usual travel now from Tarboro to Raleigh is leaving there in the morning and going to Raleigh by way of Weldon?

A. Well, I say that has been several times this year; I have taken that trip, and business men take that trip, I think.

Q. Then again there is another train that leaves in the afternoon by Rocky Mount and Selma, reaching Raleigh at 12 o'clock at night?

A. Yes.

Q. I understood you to say that it was uncertain in your opinion, because you had missed that connection once—March 9th?

A. Yes.

Q. That was the only time you missed that connection?

A. That was the only time I tried it.

Q. On that occasion the connection was not made because the train from Tarboro was half an hour late, wasn't it?

A. I do not know what was the cause of it, it was half an hour late. My attention was called to it while we were sitting in the station at Tarboro; the livery man came in and asked the question, "How many passengers want to go to Raleigh and westward please rise." There were eight who rose. Among the number was myself and Mr. Young and two or three men, I don't know who, and I asked the question, "What is the matter?" They said the train was twenty-five minutes late and they had telegraphed down from Tarboro to Rocky Mount to ascertain the number of passengers who wanted to go to Raleigh and west, and a few minutes after the train came in and we took it and when we got to Rocky Mount we stayed there some time. There was quite a number of people on the car and there was quite a stir and some choice adjectives of relief were indulged in not found in the higher catechism or in the Sermon on the Mount, and we divided and several went down to Goldsboro to spend the night trying to practice Christian equanimity, and several went to Rocky Mount.

133 Q. Was that train from Tarboro to Goldsboro?

A. I think it starts at Goldsboro in the morning. It is an accommodation train which we know as the Norfolk Shoo Fly, and there is another known in that country as the Selma Shoo Fly.

Q. But wasn't the connection to be made at Selma?

A. The connection was to be made at Selma. We expected to change cars at Rocky Mount to get on the Richmond train to catch this night train. Those trains run diagonally.

Q. Before that connection was broken the bulk of travel from Tarboro went to Raleigh by way of Selma?

A. Yes.

Q. Leaving Tarboro at what time?

A. 12:23.

Q. Reaching Selma about what time?

A. Some where after half-after 2 and 3 o'clock.

Q. That was a pretty certain connection?

A. I can't say that it was. I took a run once to catch it and missed it. I can't say that it was certain or uncertain. I missed it a time or two.

Q. What was the occasion of your running?

A. It started off just as we got in sight. We were not up to the

station; it stopped and we thought it had stopped for us and we put out, then we put back; but that has been a couple of years ago.

Q. Was that your custom by way of going from Tarboro to Raleigh?

A. Yes, it was a convenient route when we made connection.

Q. How many times do you go to Raleigh, frequently?

A. I suppose I go to Raleigh and pass Raleigh—I go to Chapel Hill once a year and average perhaps twelve times, or once a month, in the course of a year.

Q. That is the only time you have missed connection at Selma?

A. I have missed connection going to Raleigh—in the old connection I never missed connection but two or three times.

Q. In the last ten or twelve years?

A. I have missed more than that in that time.

134 Q. More than two or three times?

A. I found on several occasions that they could not make it and I went back to Tarboro to get my breath to make a fresh start next day.

Q. You travel as often as anybody in Tarboro?

A. I believe there are two or three young men who go up oftener than I do, but one way is as good as another for them.

Q. You go as often as any man in Tarboro?

A. As any Tarboro citizen, perhaps I do.

Q. You said when you got to Goldsboro that night the Southern had left and you had to stay until next morning?

A. Well, we knew that we would miss it, but we went to Goldsboro for convenience.

Q. Don't you know that that Southern train that left Goldsboro that night lays over in Raleigh two hours before it goes to Greensboro?

A. I didn't know that.

Q. What time did your train get to Goldsboro—the Shoo Fly from Norfolk?

A. It gets there a little before 9 o'clock.

Q. I mean the night in question?

A. About the usual time.

Q. Why was it the Southern train wasn't there to meet you?

A. It didn't make connection there at all; the Southern train pulled out by the time we got to Rocky Mount.

Q. When was that?

A. March 9th of this year—that train made no connection at Goldsboro.

Q. Are you speaking only of that night or generally?

A. *A.* They told me they didn't make connection and didn't try to make it, and the only way to make it was by Selma. The train pulled out by the time we left Rocky Mount; we knew we were not going to make connection.

Q. What time did you get to Goldsboro?

A. At 9 o'clock, or somewhere about.

Q. Don't you know that the leaving time of the Southern from Goldsboro has changed the schedule 9:37 at night?

A. I know that night the conductor came in and told the passengers that they would either have to stop at Rocky Mount, that they made no connection at Selma. I remember asking him myself, "Is there no possibility of making the connection at Goldsboro?" He said no, they didn't wait for them at all.

Q. You got to Goldsboro at what time?

A. Somewhere about 9 o'clock. There was a delay at Rocky Mount of probably 15 or 20 minutes.

Redirect by Mr. WOODARD:

Q. Mr. Davis asked you in the last two or three years before this connection was nominally broken how often you missed it, you said that often you found the Coast Line train late?

A. Twice I did that in the last three or four years.

Professor J. I. FOUST, witness for plaintiff, sworn, testified:

Direct by Mr. WOODARD:

Q. Where do you reside?

A. Greensboro.

Q. What position do you hold at Greensboro?

A. Teacher in the State normal school.

Q. How many girls attend the State normal school from Beaufort county?

A. Eight.

Q. How many from Bertie?

A. Seven.

Q. How many from Edgecombe?

A. Thirteen.

Q. How many from Nash?

A. Twelve.

Q. From Pitt?

A. Seven.

Q. From Wilson?

A. Five.

Q. From Gates county?

A. Two.

Q. Washington county?

A. Three.

Q. State what inconvenience the girls from those counties were subjected to in getting to and from Greensboro by the change of this Selma connection of your own knowledge?

A. My attention has been called to it. One time we got a telegram at the college——

Q. In consequence of that telegram did you go to the station at Greensboro?

A. I went at half-past 5 o'clock in the morning in January.

Q. What was the condition of the weather?

136 A. Very cold; the train came in, I think, about 6 o'clock; we had from 30 to 35 students on that train; it was a mixed train coming from Goldsboro and reaching Greensboro at 6 o'clock in the morning.

Q. Do you know whether they had sat up all night—were they in a sleeper?

A. They were in a day coach—there was a passenger coach attached to the freight—a mixed train.

Q. Do you know when they left home?

A. I don't know of my own knowledge.

Cross-examined by Mr. DOUGLAS:

Q. What kind of accommodations were on that train?

A. If I remember right there was a sleeper on and two day coaches.

Q. And a lot of freight trains?

A. I don't remember—it was a mixed train.

Q. What train was that, a Coast Line train?

A. A Southern train.

Q. How far is that from the Coast Line railroad?

A. One hundred miles.

Q. Where was the common gathering point of those girls? Wasn't it Goldsboro?

A. I should say not.

Q. Haven't they almost always gathered there and then distributed afterwards?

A. That would be a conjecture on my part.

Q. Do you know the distance from Goldboro to Greensboro?

A. I don't know, except as it is published by the railroad.

Q. Have you been over it?

A. Yes, sir.

Q. If they had left off those freight trains couldn't they have run that in less than three hours from Goldsboro to Greensboro?

A. I do not think the passenger trains make it in three hours?

Q. How long does it take to make it?

A. Four hours, I think.

137 Q. Then they could have run it in four hours if they hadn't tried to carry freight?

A. Yes, sir.

Q. If the Shoo Fly train from Norfolk got in at 9 o'clock this train could reach Greensboro on the ordinary schedule between 12 and 1, couldn't it?

A. If it were a passenger train, yes, I should say it could.

Q. Now, have you any students from Wake Forest?

A. We have one student.

Q. Have you any from Franklin county?

A. Yes, we have five.
Q. Have you any from Vance county?
A. Yes, nine.
Q. Any from Warren county?
A. Yes, four.
Q. Any from Halifax?
A. Seven from Halifax.
Q. Any from Northampton?
A. Six.
Q. Suppose that the Southern train as it now exists has broken connection at Raleigh, how do your students get through to Greensboro from up in that section?
A. I do not know anything about that connection.
Q. I am assuming that the connection is broken at Raleigh, have they any other means of getting to Greensboro at all?
A. If they came to Raleigh the only means of getting to Greensboro would be on the Southern railway.

C. W. GOLD, witness for plaintiff, sworn.

Direct by Mr. WOODWARD:

Q. Where do you reside?
A. Wilson.
Q. Do you have occasion to go to Greensboro frequently?
A. Yes, sir.
Q. From Wilson?
A. Yes.
Q. Do you go on this night train?
A. Yes, sir.
Q. Before this connection was nominally broken, before October 11th of last year, how was this Selma connection, Greensboro from Wilson?
A. Comparatively good. You left Greensboro and went down to Selma, and if the Coast Line train was on time——

Q. State whether or not, if you know, it was frequently
138 late?

A. On the times I went down there it was frequently late; I can't say how many times.
Q. Was it a reasonably certain connection?
A. I should not say so.
Q. When you failed to connect at Selma you stayed in Selma, of course, until 10 o'clock that night?
A. Yes, or I found out before I left Wilson.
Q. State whether, in your knowledge, a considerable number of people have been inconvenienced by the breaking of that connection?
A. I know of one instance in which quite a number of people were inconvenienced.
Q. Where were they going?

A. On the day that first connection was broken I was going to Greensboro to the reunion, quite a number of people who went on the afternoon train were inconvenienced and compelled to lay over in Selma until night.

Q. Do you know whether or not on that day the Coast Line was on time or not?

A. I can't say.

Q. Do you know how many people were on that train?

A. No, sir.

Q. Are you a member of the board of agriculture and trustee of the A. and M. college?

A. Yes, sir.

Q. Do you know how the people from Bertie reach Raleigh?

A. They leave Windsor at about 9 o'clock in the morning; go over to Ahoskie and either go up on the noon train at Selma or wait in Ahoskie until 6 o'clock and get to Selma at 9 o'clock.

Q. A party leaving Windsor in the morning, if connection was restored, what time would they reach Raleigh?

A. Four in the afternoon.

Q. What time does he reach Raleigh now?

A. About 12 at night.

Q. Do you know J. B. Stokes?

A. Yes, sir.

139 Cross-examined by Mr. JONES:

Q. You say that on one occasion there was some inconvenience by a broken connection; you say you don't remember whether the Coast Line train was on time or not?

A. No, sir.

Q. Who broke that connection?

A. Of my own knowledge I don't know.

Q. Don't you know that the Southern train was set up about 25 or 30 minutes?

A. Yes, sir.

Q. Don't you know that that was the cause of breaking the connection there?

A. I suppose so; of my own knowledge I can't say—I know one train was changed.

Q. Which train was that?

A. The Southern.

Q. And that very day they made the change is the very day you spoke of?

A. I went on the night train and found the passengers there.

Q. You went on the night train, struck the night train and came on up to Greensboro?

A. Yes, sir.

Q. You live in Wilson and do business in Greensboro?

A. Yes.

Q. That was the occasion they failed to make connection—the first day?

A. Yes, sir.

Q. If the people from Bertie go around by Weldon don't they get here at the same time that they do by Selma?

A. I don't know, I only know this in reference to the Bertie cases that Mr. Stokes goes to Raleigh by Selma.

Q. When you leave Wilson to go to Greensboro you have a morning train that takes you to Greensboro by Selma?

A. Yes; leaves Wilson at 6 o'clock in the morning.

Q. Then you have a night train that takes you right along up to Selma by Greensboro?

A. Yes, sir.

Q. Do they make connection there?

A. A little over an hour in Selma.

Q. You know there has been a change where the Southern is concerned?

A. Yes, sir.

Q. Don't you know that the Southern train leaves Golds-
140 boro thirty minutes sooner than it did prior to the breaking of that connection?

A. I don't know.

Q. Don't you know that it passes Selma thirty minutes prior to the time?

A. Yes, sir.

Redirect by Mr. WOODWARD:

Q. When you leave Wilson at night what time do you get to Selma?

A. Half-past 9 or nearer 10 o'clock.

Q. How long do you stay there before taking the Greensboro train?

A. An hour, I think.

Q. Is there a waiting room there?

A. Yes.

Q. What is the character, condition and accommodations?

A. From the standpoint of lights it is right poor. I usually spend the time there reading. There is one little, smokey lamp there.

Q. What about the fire?

A. I don't recall the fire.

Q. Where do you take the sleeper on that train?

A. Raleigh.

Recross-examination by Mr. JONES:

Q. In regard to the Coast Line is there any dissatisfaction; isn't it on account of the fact that the train from Goldsboro to Greensboro is set thirty minutes earlier than it was?

A. I think they just about divide the responsibility between the two.

Q. They think, then, that the Southern is as much to blame as the Coast Line?

A. They think that both ought to join in.

Mr. WOODWARD:

Q. It is an important thing that Selma connection for the people at Greensboro?

A. Yes, sir.

Mr. E. L. DAUTRIDGE, witness for plaintiff.

Direct by Mr. WOODWARD:

Q. Where do you live?

A. Near Rocky Mount.

Q. How far?

A. Two miles and a half.

Q. Are you a member of the legislature?

A. Yes, sir.

141 Q. Do you frequently go to Raleigh?

A. Yes, for the last few years.

Q. What inconvenience have you or your family or people of your section been subjected to by the breaking of that connection?

A. I don't know how to answer that question.

Q. Have you a daughter at school in Raleigh?

A. Yes.

Q. How does she get to Raleigh?

A. The most convenient way is to leave home before day, catch that early train at Rocky Mount.

Q. What time do you have to leave home in the morning?

A. Half-past 3.

Q. Has that been the time you have been getting up to make that early train?

A. Yes, sir.

Q. What time does that train leave Rocky Mount?

A. At 5:15. I live two miles in the country.

Q. What other train is there from Rocky Mount to Raleigh?

A. The Richmond Shoo Fly about 8 o'clock.

Cross-examined by Mr. POU:

Q. It would cost a little bit more, but your daughter could leave Rocky Mount at half-past 9 and get to Raleigh at 3:50?

A. Well, she is young and would have to have her baggage checked at Weldon, which would be an inconvenience.

Q. Have you enquired at Rocky Mount about a ticket for Weldon?

A. Yes, sir.

Q. That is the only inconvenience, because there is a train that passes Rocky Mount after 12 o'clock for Weldon?

A. I know we always approach a trip to Raleigh with fear and trembling on account of the Selma connection.

Q. Well, now there is no complaint about the Coast Line service?

A. Well, it has been uncertain for a number of years.

Redirect by Mr. WOODWARD:

Q. You applied to agent at Rocky Mount for ticket via Weldon?

A. Yes.

142 Q. And he declined to sell it to you?

A. Yes.

Mr. POU: Do the trains run right in at the same place, under one shed?

A. Yes, sir.

J. L. STARKEY, being sworn, testified as follows:

Examination by Mr. WOODWARD:

Q. Where do you live?

A. Greenville, N. C.

Q. Before the Selma connection was broken which was the usual route for your people going to Raleigh and points west of Raleigh?

A. By Selma.

Q. What time did you leave home?

A. 8:30 or 8:45 a. m.

Q. You would get to Raleigh in the afternoon—the schedule shows that?

A. Yes.

Q. Have you had occasion to go to Greensboro since the connection was broken?

A. Yes.

Q. How did you go? What was the occasion of your going?

A. I took my brother to the Keely institute.

Q. What time did you leave Greenville, 8:30 or 8:45 in the morning?

A. Yes.

Q. What time did you reach Greensboro?

A. 7:30 next morning.

Q. Leaving Greenville, Monday you reached Greensboro Tuesday—the next morning?

A. Yes.

Q. Where did you buy your ticket?

A. From the Atlantic Coast Line in Greenville.

Q. Did you state to the agent where you wanted to go?

A. I explained to him why I wanted to get there. My brother was in pretty bad shape and I did not want to lie over. I came on to Raleigh.

Q. How long did you stay there?
A. Until 2 o'clock that night.
Q. Reaching Greenboro at 6 in the morning?
A. No; very near 8 next morning.

143 Cross-examination by Mr. POU:

Q. Mr. Starkey, you find that you lost much time unnecessarily?
A. Yes.
Q. You found out since that if you had taken the Seaboard Air Line to Durham you would have got to Greensboro at 6, did you not?
A. Yes, sir; I have been informed so.
Q. If the train had not been seventeen minutes sooner you could have gotten to Greensboro that afternoon. What was the trouble?
A. My brother wanted to go just as quick as possible. The train was nearly always an hour late; sometimes not late any.
Q. You took the route that would have given you a certainty of being left?
A. They told me I would have gotten there in plenty of time.
Q. It was a mistake of the agent?
A. I did like he told me to do. Coast Line road.
Q. You relied upon what the agent told you?
A. Yes.
Q. I will ask you if there is a train passing Greenville at night going to Kinston and connecting with the Atlantic and North Carolina railroad? Did not the agent tell you you would make connection?
A. Yes; if the train was on time.
Q. You told the agent of the Coast Line where you wanted to go? You acted on his advice, and told him why you wanted to go quickly?
A. Yes.

Mr. J. B. JAMES, being sworn, testified as follows:

Examination by Mr. WOODWARD:

Q. Mr. James, where is your home?
A. Greenville.
Q. You are attending Chapel Hill now?
A. Yes.
Q. When did you go home last?
A. Christmas.
Q. Where did you buy your ticket?
A. From Chapel Hill to Greenville.
Q. Was there any reduction in the Christmas rates from Chapel Hill to Greenville and return?
A. Yes.

144 Q. Which way did the agent sell you your ticket?
A. By Selma and Rocky Mount.
Q. How did you come back?
A. I went from there to Parmele, then to Goldsboro, spent the night in Goldsboro, reached Chapel Hill the following day at 11.
Q. Before the Selma connection was broken what time did you leave your home and reach Chapel Hill?
A. Left something like 8:30 and got there same day about dark—6, I think.

Cross-examination by Mr. DOUGLASS:

Q. Who was it sold you your ticket around that way? What road?
A. Southern. Southern goes to Chapel Hill.
Q. What time did you get back?
A. In the afternoon.
Q. Why did you not go to Tarboro?
A. I did.
Q. What time did you get to Goldsboro?
A. Between 4 and 5 o'clock.
Q. Did you take the train in this direction?
A. No, sir.
Q. Why did you take the night train?
A. Because I would have to lie over. I could not get to Chapel Hill before next day.
Q. When you leave Goldsboro what time do you get to University station?
A. In the night some time. Trains go only twice a day.
Q. The cause of your staying at Goldsboro was the failure of the Southern to make connection at Chapel Hill?
A. Yes.
Q. Why did you not take the night train at Goldsboro?
A. The agent said it was uncertain.
Q. Mr. James, you say that the agent of the Coast Line said the connection was uncertain?
A. Yes.
Q. Could you not have bought a return ticket from Greenville to Chapel Hill by Weldon?
A. Possibly so.

145 JOHN W. WILLIAMS, being sworn, testifies as follows:

Q. Where do you live?
A. Washington, N. C.
Q. Where are you living now—you are attending school now, I believe?
A. Chapel Hill; medical department.
Q. Have you had occasion to go from Washington to Chapel Hill any time this year?

A. January 7th; yes.
Q. Who accompanied you on the trip?
A. Dr. Nicholson.
Q. Where was Dr. Nicholson going?
A. Going with his daughters as far as Greensboro if he had not missed connection.
Q. Where were you going?
A. Chapel Hill.
Q. What time did you leave Washington?
A. Left that afternoon on the noon train.
Q. What time did you reach Selma that night?
A. About 9 o'clock, I reckon—about.
Q. When did you leave Selma—you and your party?
A. Next morning aboul 8. Spent the night in Selma.
Q. How far did you go with them?
A. As far as University station.
Q. If the Selma connection was restored, what time would Dr. Nicholson leave Washington and reach Greensboro?
A. 8:30 a. m. and reach Greensboro that night.
Q. If the Selma connection had been restored what time would they have left Washington that morning?
A. About eight.
Q. What time would they reach Greensboro?
A. 6:30 that night.
Q. What time would you reach University station?
A. Don't know exactly, about 5 o'clock.
Q. They would have gone on the same train you went on to reach University station?
A. Yes.

146 Cross-examination by Mr. SIMMS:

Q. The reason they did not go to Greensboro was because they could not get a sleeper?
A. I suppose so.
Q. You got to Selma an hour or more before the Southern left going west?
A. Don't know.
Q. Didn't inquire about it?
A. No.
Q. You were in plenty of time, but did not get as nice a train as you wanted. The Southern train that passed Selma had a first-class car on it, didn't it?
A. Don't know; never came up on it.
Q. Why didn't you go by Weldon?
A. My ticket did not call for it.
Q. Can't you come by Weldon as easily as by Selma?
A. Never have tried it.
Q. So you do not know anything about the connection?
A. No, sir.

Re-direct examination:

Q. The reason your party did not leave on the morning train was because you would have missed the connection at Selma and would have had to stay there all day?

A. Yes.

Q. You had a return ticket?

A. Yes.

Q. Did Mr. Nicholson have a return ticket?

A. I don't know. Think he had a ticket from Washington to Greensboro.

Q. If you had left Washington in the morning what time would you have reached Selma?

A. They would have made connection in time for me to get to Chapel Hill that night. The agent at Washington told me I would not make it.

Q. I will ask you why you did not go on the night train?

A. It would have put me there at three in the night.

Re-cross:

Q. You came up last fall before the connection was broken? Was that on the night train?

A. No; morning train.

147 Q. It did not make any difference to you?

A. No, I came up with a crowd.

Q. The connection did not have anything to do with your coming either in the afternoon or at night. The Coast Line train goes into Selma the same time as usual?

A. The agent at Washington told me I would not make connection. The Southern moved its train out and would not wait.

(Paper admitted; defendants object.)

F. B. RICKS, being sworn, testifies as follows:

Q. Mr. Ricks, where do you reside?

A. Greensboro.

Q. Where did you live before moving to Greensboro?

A. Nashville.

Q. You have business connections in Nashville now?

A. Yes.

Q. Prior to the breaking of the Selma connection what time could you leave Nashville and reach Greensboro?

A. I could leave Nashville at 11:40 or 11:50, between 11:40 and 11:50, and reach Greensboro at 6:45 same day.

Q. What is the character of the connection on the 5 o'clock train leaving Nashville in the afternoon?

A. I have not missed connection that way. I have to go to Rocky Mount and stay until the train from Richmond comes along.

Q. Is it a reasonably certain connection?

A. Don't know. I know that I missed connection leaving at twelve; missed connection at Rocky Mount.

Q. What is your usual way of going?

A. Until this connection was broken I left in the morning between 11 and 12, but now in the afternoon between 5 and 6.

Q. You say you do not know how often it fails to connect at Rocky Mount?

A. The time I missed I missed at twelve.

Q. How long do you have to stay in Selma?

A. About two hours.

Q. What are the accommodations at Selma for passengers staying over?

148 A. I have stayed when there was no fire and so dark I could not recognize a man at all. The Coast Line depot is where we buy tickets—union depot, I think it is.

Q. Were you troubled there last winter?

A. Yes, sir, several times. Found no light nor fire—very little. No fire at all. I could not recognize a man at all. Stayed about two hours, I think.

Q. What time did you reach Greensboro?

A. About 6 in the morning.

Q. Where is the sleeper put on that train?

A. At Raleigh, I think it is. I have not been over that way many times. Rather than be troubled at night, I stayed in Raleigh.

Cross-examination by Mr. DOUGLASS:

Q. What expense to you would it have been to have gone to Goldsboro?

A. It would have cost me $1 more. I ride on mileage altogether.

Q. Can't you give your mileage and take a ticket? You know it is a uniform rule in the railroad offices?

A. No, sir; it is the first time I ever heard of it. I came to Raleigh sixteen times last year.

Q. Mr. Ricks, what time did you go to Selma?

A. I don't know exactly what time; somewhere about 9 o'clock—about 9 o'clock.

Q. What time does the train leave Goldsboro?

A. I don't know. I have never been that way in my life

Q. What is the distance from Goldsboro to Selma?

A. I don't know; I know how far it is from Selma to Raleigh.

Q. What were you waiting there for?

A. For the train to come from Goldsboro. I was waiting on the Southern train. It was delayed and did not come on time.

Q. What time is it due at Raleigh?

A. I do not know.

Q. You have to leave there a little after 10 to go to Raleigh?

A. A little after 11.

Q. How long did you lay over in Raleigh?

A. Until next day. I have not been to Greensboro that way but twice.

Q. How long did you have to wait during the two times
149 you came here?

A. I don't remember; something between an hour and an hour and a half. I do not know for certain how long it was.

Q. Are there good hotels in Selma?

A. I don't know; may be. I have not seen them. There is one less than one hundred yards from the depot. I have not been in it. I have been in the best there, and could not get a decent place, sir. I don't know of the new hotel.

Q. Is there a good one in Goldsboro?

A. Yes; I could have laid over there, but it would have cost me two or three dollars more.

Q. Do you know it would cost you more?

A. Yes.

Gen. W. R. Cox, being sworn, testifies as follows:

Q. General, you reside in Edgecombe county?

A. Yes, sir.

Q. How far from the station on the Coast Line?

A. I reside a mile, sir.

Q. How far from Rocky Mount?

A. Eight miles.

Q. Prior to the breaking of the connection at Selma, what was the mode of travel for people in your section to Raleigh and points west of Raleigh?

A. I came on the noon train. Took train at Rocky Mount at 1 o'clock, reaching Raleigh in the afternoon, 3:30, I think, sir.

Q. General, since the connection is broken, what is your means of getting here?

A. I have to travel at night or stop over at Selma or Goldsboro.

Q. What time do you leave your home now?

A. Eight o'clock at night, getting here at 8 in the morning.

Q. Why did you abandon the night train?

A. I would have to wind among those cars getting out, and had to walk up town; no convenience there to go up.

Q. What is the character of that train from Selma here?

A. Mixed train—inferior.

Q. What are the accommodations for passengers in Selma waiting for that train?

150 A. They are inferior. In the first place you have to stop in a large room not heated in winter, or go to one of those small eating-houses.

Q. General, in your opinion, has the breaking of the Selma connection decreased travel to points west?

(Objection.)

Q. Have you that opinion based on any knowledge?

A. Judging from the number of ladies and children on the day train, I think it peculiarly severe on that sex, sir. I judge so. I have observed the ladies and their anxiety.

Q. Your opinion, then, is that this travel would be increased by this connection?

A. I think it would be as it was before. The tendency would be toward increase by this connection.

Q. Is there of necessity a good deal of travel from your section to Raleigh and points west?

A. Did you say *necessity?* Yes, a good deal. It is a matter of convenience in regard to the schools.

Q. Do people of your section have business in Raleigh?

A. There in the main. The lodges and things of that kind.

Q. Where does the grand lodge meet?

A. Raleigh.

Q. What time of the year?

A. In January—early part. State fair meets in October in Raleigh.

Cross-examination:

Q. Have you ever taken the route via Weldon?

A. We farmers do not know about these schedules, and we don't keep up with them. The distance from my place to Weldon is 148 miles, and from Raleigh 96. I am not much on schedules. Formerly there was a way by Weldon, and that way still exists, I judge so.

Q. There was a way you could come on the noon-day train?

A. Yes.

Q. Then there was a way you could come either by Selma or Goldsboro? There were three ways you could get from home to Raleigh on the same day?

A. I suppose so. I do not know.

151 Q. Can you leave now in the morning, and coming by way of Goldsboro, get here by 9 o'clock?

A. Can't without getting up before day; and I can't do that.

Q. And you a farmer? Can't do a day's work getting up before day?

A. If you have got to get up early, why you can. I guess a man could if he would. I took it until I suffered about the night train.

Q. Do the usual number of people come to Raleigh as did before the connection was broken?

A. I could not say.

Q. It is further by Weldon?

A. Yes, sir.

Q. You would have to leave home at 9 in the morning?

A. I never tried that.

Q. What time does the train pass Kingsboro going to Norfolk?

A. 9:30 and 2:30. I do not know much about schedules.

Q. I ask you about leaving on the morning train. How far do you live from Rocky Mount?

A. About nine miles.

Q. Going to Raleigh on the morning train, you would have to get up about 3 in the morning?

A. It depends on the season of the year. I would have to ride to Rocky Mount through the country.

R. U. BROOKS, being sworn, testifies as follows:

Q. Where do you reside?

A. Nashville.

Q. What business are you engaged in?

A. Merchant.

Q. Are you connected with any industrial enterprises in Nashville?

A. Am president of the Farmers oil mill.

Q. Prior to the breaking of the Selma connection, coming to Raleigh you would leave what time?

A. About 12 or 11:45.

Q. Since the Selma connection has been broken, what are the facilities of your people coming to Raleigh and points west?

A. We can get to Selma by leaving on the same train at 12.

Q. Leaving at 12, what time would you reach Selma?

A. About 3, and reach Raleigh about 12 at night.

152 Q. Mr. Brooks, what inconveniences have people from your own observation and experience been subjected to by the breaking of this connection?

A. I have a son living in Thomasville. About a month ago I had a telegram on Friday that his wife had an operation performed—that was on Friday about night. Again Saturday morning another telegram informed me of her death.

Q. With the Selma connection restored, what time could you have reached Thomasville?

A. I could have left Nashville at 12 in the day and reached Thomasville that night—same night.

Q. In consequence of the breaking of that connection, how did you reach Thomasville?

A. We could only take that night train at Selma. I thought I could leave Nashville on the evening train connecting at Rocky Mount. I waited there, and just before the departure of the train from Nashville to Rocky Mount, I learned that the train was late and we could not make connection. Rode through the country a distance of about twelve miles, and about 10 or 11 o'clock we left there and reached here at 12 that night. Reached Thomasville at 8 in the morning.

Q. What is the character of the train from Selma to Greensboro?

A. Mixed train—poor accommodations. The sleeper is attached here at Raleigh. We were disturbed frequently. Got to Greensboro about day.

Q. What month was that.
A. 18th of March.
Q. Nashville is the county-seat of Nash?
A. Yes.
Q. The Coast Line is the only railroad system in Nash county?
A. Yes.
Q. Are the people in your section greatly inconvenienced and burdened by expense on account of this?
A. Yes, very much.
Q. Spring Hope is the terminus?
A. Yes.
Q. Spring Hope has the same facilities you have?
A. Yes, the same.

153 Cross-examination by Mr. JONES:

Q. What time did you get the telegram?
A. About night.
Q. So you could not avoid getting left?
A. No, sir; too late.
Q. You did not take the train because you knew you would lie over at Selma?
A. Yes.
Q. Does it come there at the usual time?
A. I know there has been a change, but I do not know what the change is.
Q. There is no change at Rocky Mount, is there?
A. I could not answer as to that. I know only about the connection from Nashville to Rocky Mount. I know that I missed connection at Selma.
Q. Did I understand you to say you missed connection? You don't know the Southern gets there a half hour sooner?
A. I don't know.
Q. So you reached Thomasville at 8 in the morning?
A. Yes.
Q. If you had not missed connection, could you have gotten there earlier?
A. Eight or earlier that night. Lost eight or ten hours. The accommodations are poor.
Q. When you got to Raleigh, you took a sleeper?
A. I lost some time here.
Q. The car was standing there when you went to sleep? You do not know what time you left Raleigh?
A. Do not know how long I stayed here.
Q. What day in March was it?
A. Eighteenth.

E. B. GRANTHAM, being sworn, testifies as follows:

Q. Where do you live?
A. Nashville.
Q. You are practicing lawyer there?
A. Yes.
Q. Nashville is the county-seat of Nash county?
A. Yes.
Q. You have heard Mr. Brooks' testimony? So you say the schedules and facilities are as testified to by him?
A. Yes, about as stated.

154 Q. Have you had occasion to come to Raleigh and points west?

A. Yes, occasionally. Once a month, probably. Had been going by way of Louisburg.

Q. State, Mr. Grantham, whether, in your opinion, the travel from Nashville and points in Nash county to Raleigh has been decreased by breaking of the Selma connection, or whether it would be increased by its restoration.

(Objection).

Q. State from your own knowledge.
A. From my own knowledge it is some little. I could not say to what extent.
Q. When was the last time you undertook to make that trip from Nashville?
A. About a month ago. Made it several times.
Q. What time did you get to Selma?
A. The last time I went to Selma on that Richmond "Shoo-fly" something after 9 o'clock.
Q. How long did you stay in Selma?
A. Somewhere in the neighborhood of one hour.
Q. What are the facilities and conveniences for the traveling public at Selma?
A. Bad. They had no fire and it was a very cold night, that is, the times I stopped there. No fire and a little oil lamp. I could not have recognized a man across the room. No fire or light. I made a fire myself.

Cross-examination by Mr. POU:

Q. You never knew any one to suffer at Selma waiting for a train?
A. No.
Q. Didn't the Coast Line put you there at the contracted time?
A. Yes, it put me there to get on an inconvenient train.
Q. It got there on schedule time? While you were there you were waiting for some other train?
A. Yes, but I do not care to argue.
Q. The Coast Line put you there on time. The inconvenience

was that you got cold, and the wood was there and you started a fire. Then you were basking in the fire and was satisfied?

A. Yes.

155 Q. Nashville is, unfortunately, on a branch line, but the Coast Line gives you two trains a day, although it is on a branch line?

A. Yes.

Q. Now, when you started to Louisburg, you had to travel on the Southern and then take the Seaboard Air Line. As a matter of fact, you were near enough to have traveled in a buggy. (Refer to map.) You could in a much shorter time have reached it? You could have gone to Louisburg, but it is more expensive?

A. Yes.

Q. Mr. Grantham, the Coast Line trains run in that territory now just as they have always run?

A. You mean from Rocky Mount to Selma? Yes. I have been traveling that road for ten years.

Q. You have been practicing law for ten years?

A. Yes.

Q. And there is no appreciable difference?

A. One new train has been put on to make connection. I missed it several times. It is about as inconvenient before the break was made as it is now. I make other arrangements.

Redirect by Mr. WOODWARD:

Q. I will ask you as to diminution of travel?

A. I speak as to what I know of. I have known of some that didn't go that otherwise would.

Q. You say before this connection was broken you missed as often as you made it?

A. Yes.

Q. You missed that connection because the Coast Line failed to make its connection at Selma?

A. Yes.

Q. The Coast Line failed to connect at Selma as often as it made it before the connection was broken?

A. Yes, about as often.

Q. As to the night train: If connection was made at Selma there would have been no occasion for your using that train going to Raleigh and points west?

A. No.

W. S. CLARK, being sworn, testifies as follows:

Q. Mr. Clark, where do you reside?

A. Tarboro.

156 Q. What official position do you hold?

A. Chairman of the board of county commissioners.

Q. Before the Selma connection was broken, what were your facilities in reaching Raleigh and points west from Tarboro?

A. Well, I could leave there on the noon train if I made connection at Selma. Got there at three or four o'clock.

Q. Mr. Clark, state whether your people have been inconvenienced in any way by this Selma connection being broken.

Mr. Pou: Of your own knowledge.

A. I don't know much about it.

Q. About the county, Mr. Clark. The matter of transferring prisoners.

A. All I know is what the sheriff told me.

Q. Do you know how the sheriff reached Raleigh from Tarboro with the prisoners?

A. I don't know.

Q. Did he present his accounts to you?

A. It is paid by the State, I think.

Q. How could he have reached Raleigh?

A. If you will let me, I will tell what he would have done.

(Objection.)

Q. Mr. Clark, with that Selma connection restored, how would the sheriff have come from Tarboro here?

(Objection.)

Q. Do you know what time the sheriff left Tarboro?

A. No; nothing except what he told me.

Q. Do you know of your own knowledge how he came here?

A. No, I do not.

Q. When was it that he came?

A. Right after the criminal court. About a month ago, in March.

Q. Do you know how many persons he brought?

A. No, only what he said.

Q. Do you know of any young ladies of Tarboro in Raleigh schools?

A. In Greensboro? Yes, one or two in Tarboro.

Q. Have you a daughter attending school in Raleigh?

A. Yes.

157 Q. How does she reach Raleigh? Which way did she come?

A. Either by Selma or Goldsboro.

Q. Where did she spend the night?

A. I don't know.

Q. Who came with her?

A. One or two other girls. I don't recollect who it was.

Q. I will ask you whether or not a great many from Tarboro do not visit Raleigh during the State fair and other public occasions?

A. I suppose they do.

Mr. Z. V. JENKINS, being duly sworn, testifies as follows:

Q. Where do you reside?
A. Nashville.
Q. Without going into the matter, you have heard Mr. Brooks' and Mr. Grantham's testimony. Now, how about this night train that leaves Nashville at 5 or 6 and connects at Rocky Mount with the 8 o'clock train?
A. It is very uncertain.
Q. What is the only safe schedule for people living in Nashville to reach Raleigh and Greensboro?
A. To take the noon train.
Q. Have you had occasion to make the trip?
A. Yes.
Q. And that is the only safe course from Nashville?
A. Yes.
Q. Leaving at 12, you spend the time either at Rocky Mount or Selma?
A. If I take 39, I stay at Selma.
Q. Have you had occasion to make the trip recently, either to Raleigh or Greensboro?
A. Yes; twice this year.
Q. How long did you stay in Selma?
A. I stayed there one hour; made connection with the "Shoo-fly."
Q. What are the conveniences?
A. Very poor. About the middle of January I stopped there. It was very cold, and no fire scarcely. Built a fire out of green wood and smoked them out of the waiting-room. We stood out in the cold and got fresh air.
Q. Any ladies?
A. One; yes, sir.

158 Q. Who else was on that train on that occasion from your county?

A. Well, the grand lodge was in session. Mr. Gay, Mr. Graffert of Rocky Mount—I am not sure Mr. Graffert (?) was there—and went down on the "Shoo-fly." There were a good many Masons coming to attend the grand lodge.

Cross-examined:

Q. Mr. Jenkins, the only trouble was the green pine. Was that the only objection?
A. I did not have any trouble. I left on the late train. That was the most unpleasant thing.
Q. The Coast Line got you to Selma on time—did not get you there ahead of time?
A. Not much.
Q. I suppose they made as close connection as usual; that is, as they usually make?
A. Yes.

Q. What train were you waiting for?
A. Southern.
Q. You say your people leave at 12. That is no fault of the connection at Selma, is it?
A. I don't understand you.
Q. What time does the train leave Nashville?
A. 5:45.
Q. What is the distance from Nashville to Rocky Mount?
A. Ten miles. Sometimes the train is detained above there. If connection is made at Rocky Mount, no trouble reaching Raleigh on time.
Q. You can go by Weldon, can't you?
A. Yes; but I could drive there about as quick. About 42 or 45 miles.
Q. How far is it from Spring Hope to Louisburg?
A. Ten miles, I think. Then to drive from Nashville to Spring Hope is ten more.
Q. You could make connection on that "Shoo-fly," could not you?
A. I don't know.
Q. Don't you know that passengers from Rocky Mount to Raleigh are routed by Selma?
A. Usually; yes, sir.
Q. As to this night connection: You say in leaving Nashville you can not always (know) *where* you are going to make connection or not?

(Objection.)

A. No.

159 Q. When you missed connection, how long did you stay in Rocky Mount?
A. Until 5:15 next morning. You have to spend the night on the road somewhere.
Q. You say your route was by Selma or Goldsboro? The ticket took you the same way for the same price?
A. They do not require you to go either way.

Mr. J. M. BAIN, being sworn, testified as follows:

Q. Where do you live?
A. Nash county.
Q. How far from Nashville?
A. Ten miles.
Q. From Spring Hope?
A. Ten miles.
Q. Wilson?
A. Twelve miles.
Q. Do you know whether any young ladies in your county attend the Raleigh or Greensboro schools?
A. Yes, sir.

Q. Your daughter attends Grensboro college?
A. Yes, sir.
Q. And you have a son attending school west of Raleigh?
A. Yes.
Q. Where?
A. Oak Ridge.
Q. Prior to the breaking of the Selma connection, what time did your son and daughter leave home to reach Greensboro and Oak Ridge the same day?
A. Well, the starting point is Wilson. You leave there at 2 in the day.
Q. What time did your daughter reach Greensboro?
A. Reached there at 6.
Q. What time would your son reach Oak Ridge?
A. He would not get there till in the night. It is off the railroad.
Q. What time would he reach there that night?
A. I don't know exactly.
Q. What means have you now of getting your son to Oak Ridge and your daughter to Greensboro?
A. I have to carry them to Wilson in the day or drive down there in the night and leave on the early morning train. They could take the 2 o'clock train and lie over in Selma or in Goldsboro.
Q. Do you know how many young ladies in your county go to Greensboro to school?
A. Don't know exactly.
Q. Do you know any others besides your daughter?
A. Two or three.

160 Cross-examined:

Q. You say your son got to Oak Ridge next morning? What road is it on?
A. Oak Ridge is not on the road. He has to leave the road at Kernersville. Oak Ridge is six miles in the country.
Q. Now, if he left there that night—you don't know what time the train arrives there?
A. No, sir.
Q. There is a morning train, too?
A. Yes. Gets to Raleigh in the morning.
Q. You leave Wilson in the morning, go up to Raleigh and reach Oak Ridge that evening?
A. Yes, sir.
Q. What you complain of is this: The Coast Line reaches Selma at the usual time, and when you get to Selma there is no train connection?
A. Yes, sir.
Q. You have not examined the arriving time at Selma?
A. No.
Q. If you reached Selma in time the connection was always made?
A. Yes, sir.

WILLIS WARD, being duly sworn, testifies as follows:

Q. Where do you reside?
A. Nashville.
Q. I will not take time to ask you all this, as you have heard the other testimony. Now, Mr. Ward, how many young girls go to Greensboro schools from Nashville?
A. Three from Nashville.
Q. To what inconvenience and expense are they subjected to by the breaking of the Selma connection?
A. They have to go on to Rocky Mount and stay there, or to Selma and stay all night and reach Greensboro about 6 next morning.
Q. Have you had occasion to go over that road?
A. Not recently, since connection was broken. Went over it before.

Cross-examined by Mr. POU:

Q. If those young ladies could get to Rocky Mount in time for the 5 o'clock morning train, they could get to Greensboro be-
161 fore dinner?
A. I suppose so. But if they missed connection they would have to stay in Rocky Mount all night.
Q. From Rocky Mount to Greensboro there would not be a bit of trouble?
A. No.
Q. How far is it from Nashville to Rocky Mount?
A. Ten miles; twelve by railroad.
Q. In winter time when the girls are returning to Greensboro, if they made connection at Selma it would put them in Greensboro after dark?
A. Yes, sir; it would be night, anyway. It was frequently behind and away in the night when they got there when train was late.
Q. Would you get there in time for supper?
A. No. The last time they were up all night and got there at 6 in the morning. With the old schedule we got there in time for supper. As it is now it is six in the morning.
Q. You say it is 12 miles from Nashville to Rocky Mount?
A. Yes, it is by rail.

W. J. BATCHELOR, being sworn, testifies as follows:

Q. Where do you reside?
A. Nashville.
Q. Well, sir, you have heard these other gentlemen testify as to facilities for those from Nashville. Have you had occasion to come to Raleigh since?
A. Yes, sir.
Q. Who was with you?

A. A lady, Mrs. Cooper. Left on the noon train.
Q. What time did you reach Selma?
A. That train from Rocky Mount was late and we reached there about four on Christmas day.
Q. How late was No. 39?
A. I don't know. We reached Selma at four. The train is scheduled to reach Selma at 2:50. It was one hour and ten minutes late. About that.
Q. What time did you leave Selma that night?
A. Somewhere between 10 and 11.
162 Q. What time did you reach Greensboro?
A. Six next morning.
Q. Where did you stay in Selma?
A. Went to that "good" hotel. It was not completed when we were there.

(Cross-examination:)

Q. If the Selma connection had been made you would have reached Greensboro that afternoon—Christmas day?
A. Yes.
Q. Ever travel much Christmas time?
A. Yes.
Q. Ever find a train on time Christmas?
A. Don't know as I ever did. Generally late then; always late.

Mr. S. C. WELLS, being sworn, testifies as follows:

Q. Where do you reside?
A. Wilson, N. C.
Q. You have heard the other testimony as to facilities, &c. Do you know of your own knowledge the number of young ladies attending Greensboro normal from Wilson? How many?
A. I know four.
Q. Before October, when the Selma connection nominally was broken, what was the character of that connection? Was there any reasonable certainty of making it?
A. It was often behind—the Coast Line train was *after* late.
Q. When the Coast Line train reached Selma on time was the connection always made?
A. I think so.
Q. When No. 39 reached Selma on time it made the Selma connection?
A. Yes, sir.
Q. Was it frequently delayed?
—. Very often.
Q. What was the means of your daughter and other girls reaching Greensboro?
A. They took that train down to Goldsboro in the early morning.

Q. What time did they leave Wilson?
A. 5:55 or a few minutes before six.
Q. Do you know whether that train stops long enough between Wilson and Goldsboro and Goldsboro and Greensboro to get breakfast?
A. It is a two minutes schedule at Goldsboro, the only stop, I think.
163 Q. State whether in your opinion the restoration of this connection would increase travel.
A. It would be a supposition.
(Objection.)

Cross-examination by Mr. Pou:

Q. Mr. Wells, as it now is, there are two trains at night from Wilson making close connection, one at Selma and one at Goldsboro.
A. The one at Goldsboro is not safe.
Q. You have one safe way at night and one in the morning?
A. There is one from Wilson to Goldsboro. Can't count on that.
Q. Any person can leave Wilson and get to Greensboro for dinner and Raleigh for breakfast?
A. We got here yesterday morning in time for breakfast, after eight.

Mr. D. A. BATTS, being sworn, testified as follows:

Q. Mr. Batts, where do you live?
A. Elm City.
Q. Doorkeeper last senate?
A. Yes.
Q. You travel now for some commercial house?
A. Yes.
Q. Elm City is how far north of Wilson?
A. Six miles.
Q. State whether you considered the Selma a reasonably safe connection.
A. It was if I reached it. I had to travel this road about every 30 days.
Q. What were the facilities at Selma for the traveling public when this connection was missed?
(Objection.)
Q. What were the conditions afforded the traveling public for that wait at Selma?
A. There was not any; not very much. We went to the hotel and took a room. Bad day—sleet and snow. No fire in the waiting room at all.
Q. How were the lights?
A. No light scarcely, very dim.

Q. You are a traveling man?
A. Yes, sir.
Q. In your opinion, would travel over the Coast Line to
164 points west of Raleigh be increased if connection was restored?
A. Well, I can only say what I think; yes.
Q. Mr. Batts, I will ask whether in your own experience you have traveled over the Coast Line.
A. You mean with the firm? Yes, I wanted to make that territory.
Q. State, Mr. Batts, whether you have heard other traveling men make statements similar to yours.

(Objection.)

By Mr. ARGO:

Q. Would not a certain and reliable connection with the train at 2:25 or whatever time it gets to Selma in the afternoon, contribute largely to the convenience and benefit of that portion of the community?
A. Yes.

(Objection.)

Q. Would it contribute to the benefit and convenience of the traveling public east and north?
A. I think it would.
Q. If the Coast Line reaches Selma on time you make connection?
A. Yes.

Cross-examined by Mr. DOUGLASS:

Q. How late was the Coast Line?
A. Southern did not wait for it twenty minutes. Didn't that day. I am not sure.
Q. What line do you carry?
A. Selling drugs.
Q. Do you not canvass Selma?
A. Never tried to sell there.
Q. What is your territory?
A. All North Carolina.
Q. Do you go to Clayton? What place?
A. Principal towns in the State.
Q. What place did you ever lose in making the trip on account of that schedule?
A. I don't know. I got there occasionally. I could get back better than I could go.
Q. You mean to say a drummer and a man like you would hesitate to make Raleigh?
A. I made Raleigh. Made it every six weeks.
Q. What trip did you cut out?

A. I am not prepared to say.

165 Q. What trip did you cut out on account of that schedule?

A. I might have wanted to come to Raleigh and did not. Come every six weeks. I might be in Wilson and want to come to Raleigh that evening. I did not say I lost trips. I did not come on that train because I failed to make connection. I got here after awhile. It did not always hit right.

Q. What time did you want to reach here?

A. According to business.

Q. I put this to you: Did you ever want to come and missed it?

A. Yes, sir.

Q. When?

A. Last year. I remember on one occasion and upon several, because connection was so uncertain.

Q. What time?

A. One occasion was in May. They did not make connection always.

Q. You would not hesitate to get up at six in the morning and coming to Raleigh?

A. No.

Q. If you were in Wilson at night and had business, what would you do?

A. I would take the early morning train.

Q. To satisfy everybody, there would have to be a train every hour, so far as individuals are concerned?

A. If a traveling man could have such a schedule it would be very convenient.

Q. You had three or four trains to get here from Selma?

A. Only two. You can go by Weldon or by Selma, or by Goldsboro.

Q. It would be a great convenience to have a parlor and diner or a café car?

A. It would be a convenience, yes.

Mr. W. M. CARTER, being sworn, testifies as follows:

Q. Where do you reside?

A. Wilson.

Q. Represent what company?

A. Wells-Whiting Tobacco Co.

Q. Travel a good deal?

A. Yes.

Q. You heard the other testimony as to facilities, &c.?

A. Yes.

166 Q. State in what way you and the traveling public have been inconvenienced by changing this Selma schedule, that is, from your own observation and experience.

A. My observation is that if I get a proper connection I have to

get up at five and stop over and can't get any breakfast. I go to Danville every thirty days, either by Richmond or Emporia.

—. Before the Selma connection was broken, which way did you come?

A. This way to Danville.

Q. Since then which way?

A. Richmond or Emporia.

Q. From your observation, what other inconveniences have the traveling public been subjected to?

A. I could not say.

Q. Any parties on this train inconvenienced?

A. Not to my knowledge.

Q. Traveled with any parties recently?

A. Yes. About three weeks ago I was coming from Norfolk with a lady and gentleman who had purchased tickets to Raleigh.

Q. Where were they going?

(Objection; overruled.)

A. To Raleigh. They were going from Norfolk over the Atlantic Coast Line.

Q. Which train?

A. Train that reaches Wilson at 2:20. I told them they could not make connection in Selma. Asked the conductor if he could redeem tickets. The conductor told them he could not help them out and they came on to Goldsboro.

Q. With Selma connection restored, what time would you reach Raleigh?

A. 3:30.

Q. What time did they reach Raleigh?

A. I don't know.

Q. Could they have reached Raleigh between eleven and twelve at night?

A. I don't know.

Q. State whether a reliable and reasonably certain connection with the trains of the Atlantic Coast Line would benefit people in Selma, I mean going west of Selma.

A. It would.

C. Mr. Carter, state whether before this connection was broken in October it was a reasonably certain connection.

167 A. Well, I have never missed connection, but my family did. Missed connection at Selma going to Greensboro.

Q. When was that, Mr. Carter?

A. One year ago last summer.

Cross-examination by Mr. DOUGLASS:

Q. You manage sales department, Wells-Whiting Co., making cigarettes?

A. Yes.

Q. Commonly called "coffin tacks"?
A. Yes.
Q. Missed connection at Selma, you say?
A. No; never did.
Q. Been there pretty often?
A. Yes.
Q. Missed a good many other places?
A. Other railroads. I do not remember missing very many.
Q. In going from Wilson to Emporia and Richmond, the Coast Line gets more money out of you?
A. Yes, sir.
Q. Think they would lose money by fixing a schedule making connection at Selma?
A. I guess they would, on me.
Q. On your friends?
A. Don't know about that.
Q. Has a change been made in the Coast Line?
A. The Coast Line has been the same since I knew it.
Q. The breaking of connection at Selma is due to the Southern breaking it on account of running their schedule up.
A. I never made the trip since the change has been made.
Q. Never been to Goldsboro?
A. Yes.
Q. They leave Goldsboro earlier than they did?
A. Don't know. I have not passed over the road since the change has been made. Not that way; I go by Richmond.
Q. How much more?
A. $4.25.
Q. Takes longer?
A. Yes.
Q. How much?
A. Well, I suppose by Richmond it takes about six hours longer.
Q. What do you go to Richmond for?
A. For convenience.
168 Q. For your own convenience?
A. Yes.
Q. Have business there?
A. Yes, and I go that way for a pleasant trip.
Q. Transact business in Danville?
A. Yes.
Q. Also in Richmond?
A. Yes.
Q. Suppose you had been in Norfolk and was coming to Raleigh?
A. I would have bought a S. A. L. ticket and got here at three or four.
Q. Coast Line to blame for that?
A. They told me the agent said they would make connection at Selma.

Q. That was a matter of choice of routes as to Coast Line and Seaboard?
A. Yes.
Q. They have a café and parlor car on them, have they? Sleepers attached?
A. I don't know.

Mr. D. J. SWINDELL, being sworn, testified as follows:

Q. Where do you live?
A. Rocky Mount.
Q. What is your business?
A. Locomotive engineer.
Q. In whose service are you now?
A. Atlantic Coast Line.
Q. What run do you make?
A. I run on a branch road. One from Nashville to Rocky Mount, and shift on the yard at Rocky Mount.
Q. You leave Rocky Mount at 9:30 in the morning and return at 12:10 and leave Rocky Mount at four in the afternoon?
A. Yes.
Q. Return to Rocky Mount when?
A. 6:20.
Q. Now do you wait at Rocky Mount for the arrival of No. 40 from the South?
A. Two hours.
Q. What is the size of the engine that you are using now on the Spring Hope branch?
A. A 17 by 24 five-foot; Roger build.
Q. Ever run on the main line?
A. Yes.
Q. Acquainted with the condition of the track from Rocky Mount to Selma?
A. Yes.
Q. What is it?
A. Good.
169 Q. What kind of rail do they use on the main line?
A. Heavy rail.
Q. What size on the Nashville branch?
A. Light rail; 40 or 45.
Q. With that engine that you are using now, with two passenger coaches and a baggae coach, in what time could you safely make that run?
A. With no delays?
Q. The usual delays in putting on and taking off passengers?
A. One and one-half hours, and no other delay except passengers.
Q. How many miles an hour is that?
A. Not quite 30.
Q. Could you make 30 miles an hour?

A. Without any delays.

Q. That would include the usual stopping for taking on and putting off passengers?

A. Yes.

Q. Mr. Swindell, do you know the paper schedule of No. 39 from Rocky Mount to Selma?

A. Yes.

Q. What kind of train is that? What size train?

A. 8 to 10 coaches.

Q. What is the schedule time from South Rocky Mount? What time do you leave Rocky Mount?

A. Can't tell without looking at the time table.

Q. Could you run better on a heavy rail than a light rail?

A. Yes, sir.

Q. I mean could you run as fast and as safely on the main line as on the branch line.

A. Yes.

Q. Can you not run safer on an eighty-pound rail than on a lighter one?

A. Yes.

Q. Is not the road-bed on the main road better equipped?

A. Yes.

Q. Does the condition of the road-bed contribute to the ease and safety of a train?

A. Yes.

Q. How much wood would it take to run from Rocky Mount to Selma and return?

A. Three cords or a little over. Three or four cords.

170 Q. Do you know the market value of the wood?

A. No.

Q. How much oil—engine oil—would it take to make that 80-mile run?

—. Three pints to the hundred miles.

Q. How much cylinder oil?

—. One pint to the hundred miles.

Q. Do you know what that costs?

A. No, sir.

Q. What wages are you paid, Mr. Swindell?

A. $3.50 for 12 hours.

Q. How much for time over 12 hours?

A. 30 cents.

Q. How many men have you on the Spring Hope train?

A. We have got six—engineer, fireman, conductor, express messenger and two train hands.

Q. The express messenger does the baggage work?

A. He and the conductor.

Q. On the branch line, I will ask you if the baggage master does not also do the express work?

A. He or the conductor.

Q. What crew would you require to go from Rocky Mount to Selma with baggage car and passenger coaches?
A. Don't know; can't tell.
Q. How many on the Plymouth train?
A. Don't know.
Q. Before you leave for Nashville in the morning, what work are you engaged in?
A. Shifting on the yard.
Q. At Rocky Mount, when you get back—you say you get back at twelve—what work are you engaged in from the time you return until leaving time for Spring Hope?
A. Shifting in the yard until we get done.
Q. Which one of your crew helps you do this switching?
A. Conductor and two train men.
Q. You are not engaged in that every time you arrive until you leave?
A. Unless we get done.
Q. How long does it take to finish switching?
A. Takes all the time; a good deal of the time.
Q. You wait two hours at Rocky Mount for No. 407?
A. Yes.
171 Q. When No. 40 is late, does it endanger your connection with the Norfolk and Richmond "Shoo-fly?"
A. Yes. If we are two hours late we cannot make it.
Q. How much late do you leave Rocky Mount to miss?
A. According to the work we have to do. Sometimes more than others.
Q. Have you left Rocky Mount recently before the arrival of No. 40?
A. One time.
Q. When was that?
A. I could not tell you. Some time last week—3½ hours late.
Q. Does the Plymouth train wait at Rocky Mount for No. 40?
A. Not always.
Q. When the Plymouth train leaves Rocky Mount before No. 40 evrives, No. 40 being the train from Selma on to Rocky Mount, whatever passengers on No. 40 for Greenville, Plymouth and Nashville are delayed how long?

(Objection. Objection sustained.)

Afternoon session began at 3 o'clock, April 26th.

D. J. SWINDELL—Cross-examined by Mr. DAVIS:

Q. I understood you to say on your examination that your regular route was to leave Rocky Mount at 9:30 in the morning, reaching Spring Hope about what time?
A. 11 o'clock.

Q. Then you leave Spring Hope on the return at 11:45?
A. Yes.
Q. Reaching Rocky Mount at 12:10?
A. Yes, sir.
Q. Remaining in Rocky Mount until 4 in the afternoon?
A. Yes.
Q. Then running up to Spring Hope, reaching there at 4:45?
A. Yes, sir?
Q. Leaving Spring Hope at 5:15 and returning to Rocky Mount at 6:20?
A. Yes, sir.
Q. That in the interval while in Rocky Mount you and your crew were engaged in shifting work upon the yards?
A. Yes.
172 Q. When you were at Spring Hope you are engaged when necessary in shifting cars there?
A. Yes, sir.
Q. I also understood you to say it is 42 miles from Rocky Mount to Selma?
A. Forty and some tenths, I think; I may be mistaken about that.
Q. — far is it from South Rocky Mount to North Rocky Mount?
A. One mile.
Q. Do you mean to say it is only 40 miles from Rocky Mount to Selma, are you estimating the distance from North Rocky Mount or South Rocky Mount?
A. South Rocky Mount.
Q. Then that will put it one mile farther than North Rocky Mount?
A. Yes, a mile and some tenths.
Q. I further understood you to say that you could take your engine and make that run from Rocky Mount to Selma in an hour and 30 minutes?
A. Yes, sir.
Q. I understood you to say you could make that run in an hour and 30 minutes?
A. An hour and 20 minutes.
Q. You have just said you could make that run in an hour and 30 minutes provided there was nothing to interfere?
A. Yes.
Q. You afterwards said you could make that run in an hour and 25 minutes?
A. No.
Q. Well, an hour and 20 minutes?
A. Yes.
Q. Now in making this statement were you not meaning that you could make that run with a clear track, nothing to interfere and no stops?

A. I didn't put that in. I told you what I could do without any delays.

Q. What do you mean by delays?

A. I mean by the delay of trains—with nothing but the local work with that train alone I could make it in one hour and 20 minutes.

Q. At what rate of speed, in your opinion, would it be safe and prudent to run that train, the engine which you speak of, one baggage, two coaches, between Rocky Mount and Selma?

A. I can't say that any speed with safety.

Q. You would run it 60 miles an hour with safety?

A. No, sir.

173 Q. Do you mean it is not safe to run on that train at all?

A. I say it is not safe to run on any train, there is danger in all of them.

Q. At what rate of speed do you think it would be prudent to run that train, and what do you think it would not be prudent?

A. That engine will make a schedule of 30 miles an hour if she has a clear track without any trouble.

Q. Do you think it would be prudent to run that engine and train at a greater rate of speed than 30 miles an hour and on that track?

A. Well, I reckon so—yes.

Q. How would it be to run it 50 miles an hour?

A. Probably you have to do that sometimes to make up for a little loss.

Q. Well, in your opinion, would it be prudent?

A. It is as safe as any of them.

Q. I am asking you if it would be prudent to run that train at an average speed of 50 miles an hour?

A. I would not like to run 50 miles an hour.

Q. In making that run in an hour and 20 minutes could you tell me at what rate of speed you would estimate to run your engine, making the usual stops?

A. Sometimes get up to 35 and 40 miles an hour.

Q. Not more than 40 miles?

A. No, sir.

Q. In showing that you could make it in an hour and 20 minutes and make the usual stops you are basing it upon a run of 40 miles an hour?

A. I think 40 miles an hour would do it.

Q. Well, suppose that you believe that that train would have to meet another train at South Rocky Mount at 1:05, that would mean that that train could not get away from South Rocky Mount until five minutes after one?

A. Yes.

Q. Where would you, leaving Rocky Mount at 12:55, where would you meet a train due at South Rocky Mount at 1:05?

A. South Rocky Mount.

Q. Then your next stop would be where?
A. Sharpsburg.
174 Q. Three minutes for Sharpsburg?
A. Two minutes—three is a long stop for there.
Q. The next stop would be where?
A. Elm City.
Q. Do you know where that train would meet 48?
A. I do not know.
Q. Then you have not figured upon that train meeting any train between South Rocky Mount and Selma?
A. No.
Q. Then if that train had to meet and pass other trains between South Rocky Mount and Selma you would not say you could make that run in an hour and 20 minutes?
A. No, sir.
Q. Could you make it in an hour and 30 minutes?
A. If we had close meeting points probably we could do it.
Q. Are you not certain?
A. If we had close meeting points we could do it, I think.
Q. Suppose the jury find that 48 meets train at Elm City, how long would it take your train to get in on the siding at Elm City and let 48 pass; wouldn't five minutes be the least you would allow for that?
A. Yes, sir.
Q. You would have to hustle to get out in five minutes?
A. Yes.
Q. Your next stop would be where?
A. Wilson.
Q. Suppose the jury find that according to the municipal regulations in the town of Wilson you have to slow down in passing through Wilson, how much time do you lose there?
A. I suppose three or four minutes—say 3½.
Q. Then your next stop would be where?
A. Contentnea.
Q. At Contentnea you would have to slow down and register?
A. Yes.
Q. That would amount to a loss of how many minutes?
A. Two minutes.
Q. Then your next stop would be Lucama?
A. Yes, sir.
Q. There you lose how many minutes?
A. Two minutes.
Q. Then your next would be Kenly?
A. Yes, sir.
Q. At Kenly how much would you lose?
A. About the same, two or three minutes, say three minutes.
175 Q. Your next stop would be Micro?
A. Yes.

Q. Do you know whether or not you would meet 40 at Micro, the Richmond Shoo-fly?

A. Yes.

Q. How long would it take you to get in the siding? The same as at Elm City, that would be five minutes?

A. Yes, sir.

Q. Then suppose also that the jury find that you met 212 at the same place, Micro, wouldn't that be another difficulty in your way of making that trip in an hour and 30 minutes or an hour and 20 minutes?

A. We would have to back out of the siding, that would all be of the difference.

Q. Now taking all of these stops and the meeting of those trains and the delays attending on that, I will ask you if you could make that run from Rocky Mount to Selma in an hour and 30 minutes?

A. I don't know—I told you what I could do with the engine, and you can figure on the delays.

Q. Supposing it had three stops to make, and these delays, could you make that run in an hour and 30 minutes?

A. If there is no other delays—if the trains were right at their places.

Q. How long did you say it would take at Micro?

A. I said it would take five minutes extra to get out of the siding?

Q. The same time it would take at Elm City for No. 40?

A. Probably five minutes more.

Q. Those stops amount to 32½ minutes altogether; that would leave you 42½ minutes actual running time to make the run from Rocky Mount to Selma.

—. ——.

Q. How long would it take you?

A. I couldn't do that.

Q. I understand you to say you can make the run with no delay in an hour and 20 minutes?

A. I have done it many a time.

Q. That makes 80 minutes for that run?

A. Yes, sir.

Q. I want to understand you about that you say it takes five minutes at Elm City to pass 40 and it would take five more minutes at Micro, that makes 10 doesn't it?

A. Yes; might do it shorter than that sometimes.

176 Q. That takes 27½ minutes off of your running time of one hour and 20 minutes—you said you could make it in an hour and 20 minutes?

A. I said without any delays in an hour and 20 minutes.

Q. Now if the delays were 27½ minutes, how long would it take you to make that run?

A. One hour and 20 minutes outside of the delays.

Q. Leaving South Rocky Mount at five minutes after 1 and taking the one hour and 20 minutes outside of the delays to make the

run and 27½ minutes for the delays would put you at Selma at 2:53½ would it not?

A. I want an hour and 20 minutes; I can do it in an hour and 20 minutes without being delayed by anything else.

Q. Then you mean that you make some stops?

A. You must put in the delays; I have nothing to do with that.

Q. In making that estimate were you calculating on leaving Rocky Mount or South Rocky Mount?

A. I was figuring on a run of 40 miles—South Rocky Mount.

Q. Do you know whether or not when you get to Selma the A. C. L. has any "Y" or turn table to reverse your train?

A. I do not think so; they might have put it in since I was running there.

Q. There being no "Y" or turn-table there, you would have to run that train to Smithfield to reverse it before you could bring it back to Selma?

A. Yes.

Q. Do you know how long that would take?

A. I have no idea.

Q. Smithfield is four and a half miles from Selma?

A. Yes.

Q. After you get there how long does it take you to put your train in the turn table and reverse it—15 minutes?

A. Yes, all of that.

Q. How long would it take you to go to Smithfield, put your train upon a turn table and reverse it and get back to Selma for return trip to Rocky Mount?

A. I would want about 20 or 25 minutes.

177 Q. Remember you have got to run down four and a half miles to Smithfield before you get to the turn table—that would take ten minutes?

A. Yes.

Q. Then it would take you the same amount to get back?

A. Yes, sir.

Q. Then it would take you fifteen minutes to turn around?

A. You can turn around on a Y in five or six minutes.

Q. What would that delay be—twenty minutes?

A. Yes.

Q. Can't you get water there?

A. Yes.

Q. How long would that take, three minutes?

A. Yes.

Q. And you have to coal up or take on wood?

A. Yes, either there or at Selma.

Q. That would take about how long?

A. From six to eight minutes with three men.

Q. Then what time would it be before you got back to Rocky Mount?

A. I don't know.

Q. Six o'clock?

A. I suppose so; I don't know when you would start me back.

Q. When you got through—as soon as you could—you couldn't give me an idea when you would get back?

A. No, sir.

Q. Did you say it would take three or four cords of wood to make that run?

A. I said between three and four; I suppose four to make that round trip, about two cords each way, but it would not always be that; it would come mighty near it.

Q. Could you make that trip from Rocky Mount and get back in time to make your usual run to Spring Hope?

A. I think it would be too much to tackle every day. I don't think we could make it every day.

Q. You would have to fill your tender again at the end of your trip at Selma—that would be another delay of how many minutes?

A. From six to eight minutes with three men.

178 Q. Do you know whether the company keeps any wood along that line?

A. No, sir.

Q. They use coal entirely on the main line?

A. Yes, sir.

Q. You said your engine was a wood burner?

A. Yes, sir.

Redirect by Mr. WOODWARD:

Q. Counsel asked you about the time it would take you to pass two trains at Micro—that is a station this side of Selma. Do you know the length of the siding there?

A. No, sir.

Q. If there was enough siding to hold two trains, and if those trains were in the siding when you got there you would have to stop longer than two minutes at Micro?

A. No, sir.

Q. Now, if there is a turn table at Selma how long would it take you to turn your train?

A. Well, with a Y five or six minutes, turn table fifteen or twenty.

Q. If there is a Y it would take how long?

A. Six minutes.

Q. That would put you at 2:26. How long would it take you to put on wood?

A. Eight minutes.

Q. How long to get water—couldn't you get wood and water at the same time?

A. If it was in the right place I could.

Q. Then you would be ready to start back at 34 minutes past 2 would you not?

A. If I had the right of way.

Q. If you got there on time, 2:26 minutes, you would be ready to start back at 2.34?

A. Yes.

Q. You could go back from Selma to Rocky Mount in the same time—an hour and twenty minutes?

A. Yes.

Q. That would put you back in Rocky Mount at 3:54?

A. Yes.

Q. Your leaving time from Rocky Mount to Spring Hope is 4, so that would put you back in time to leave on schedule time to Spring Hope?

A. Yes.

Q. What is your usual leaving time for the last six months for Spring Hope?

A. Four o'clock.

Q. Do you wait for No. 40?

A. Yes, two hours.

179 Q. Is it a fact or not that 40 for the last six months has been uniformly late?

A. Yes.

Judge BROWN:

Q. You are acquainted with the traffic there of this road on the main line?

A. Yes, sir.

Q. State whether or not you could run your train somewhere between 12:30 and 4 o'clock p. m.?

A. No, sir; I am satisfied I could not with the traffic they have got there now.

Q. What other work do you do at Rocky Mount?

A. I run on a branch road twenty miles and shift in the yard.

Mr. DAVIS:

Q. You said you couldn't make that run and get there at 4 o'clock?

A. If we had an open road we could do it all right, but we haven't got that.

Mr. WOODWARD:

Q. Assuming that you left Selma at 3 o'clock going back to Rocky Mount would you meet any trains on that run?

A. You might meet one first-class train.

Q. Which is that?

A. 39.

Q. Isn't that due at Selma at 2:50?

A. I don't remember now.

Q. If 39 is due at Selma at 2:50 then you would not meet 39 at all leaving at 3 o'clock?

A. No, sir.

Q. You would not meet any other passenger train leaving at 3 o'clock going to Rocky Mount?

A. No, sir.

Q. Do you know whether you would meet any freight trains or not?

A. Freight trains are mighty thick all the time—we would not meet a passenger train.

Q. If you left Selma at 3 o'clock, meeting no passenger train, you could reach Rocky Mount at 4:20?

A. Yes.

Mr. JONES:

Q. Didn't you say that freight trains were mighty thick all the time?

A. Yes, all the time.

Mr. DAVIS:

Q. Don't you know that the north-bound trains have the right of way?

A. Yes, sir.

Plaintiffs offer in evidence catalogues of certain educational institutions for the purpose of showing the residence and location of people who travel from northeast North Carolina to the State
180 institutions at Raleigh and west of Raleigh, which catalogues show post-office address and residence of the pupils. The defendant consents that the catalogues may be used, provided the testimony itself is competent. The court permits the introduction of the catalogues and the defendant excepts. The catalogues showed the number of students to be 272.

Plaintiff is allowed to introduce the census report showing the population of certain counties contiguous to the A. C. L. Ry., to which defendant excepts. Exception overruled.

Nash	25,478
Edgecombe	26,591
Wilson	23,596
Pitt	30,889
Martin	15,383
Beaufort	26,404
Washington	10,608
Bertie	20,538
Gates	10,413
	189,900

The plaintiff offers evidence showing the number of tickets sold and the revenue derived therefrom for twelve months, ending February 26, 1904, at the following stations: Wilson, Elm City, Rocky

Mount, Spring Hope, Nashville, Tarboro, Conetoe, Greenville, Washington, Battleboro, Whitakers, Black Creek, Bethel, Parmele, Robinsonville, Everetts, Pactolus, Jamesville.

His honor ruled that the plaintiff could show the number of tickets sold, but not the revenue derived from their sale, as some evidence of the importance of the passenger traffic. The defendant excepts to the ruling of his honor, and the plaintiff excepts to that portion of the ruling of his honor that excludes the evidence as to the amount of revenue derived from the sale of such tickets.

	The number of local tickets sold.	Interline tickets
181 Wilson	33,208	4,405
Elm City	6,620	171
Rocky Mount	35,000	2,610
Spring Hope	3,907	15
Nashville	5,297	20
Tarboro	15,624	938
Conetoe	2,663	1
Greenville	10,030	627
Washington	6,810	886
Battleboro	5,489	52
Whitakers	6,792	156
Black Creek	5,329	3
Bethel	3,824	3
Parmele	9,559	7
Robinsonville	3,224	19
Everetts	2,717	1
Pactolus	1,312	1
Jamesville	3,422	4
Plymouth	4,386	91
Total	164,313	10,010

Defendant excepts to this evidence and the plaintiff excepts to the refusal of the court to permit evidence as to the receipts at said points from the sale of tickets.

Plaintiff offers in evidence the receipts for freight shipped from the above mentioned points during the same period. The court excludes this testimony and the plaintiff excepts.

Mr. H. C. BROWN, witness for plaintiff.

Direct by Mr. WOODWARD:

Q. You reside in Raleigh. What official position do you hold?
A. Clerk to the corporation commission.
Q. The schedules, I believe, of the Southern and the A. C. L. are

in evidence? What is the distance from Washington to
182 Raleigh via Weldon?

A. I don't know without referring to some notes—171 from Washington to Raleigh via Weldon.

Q. What is the distance from Washington to Raleigh via Selma?

A. One hundred and thirty miles.

Q. What is the distance from Greenville to Raleigh via Weldon?

A. One hundred and sixty-one miles.

Q. Greenville to Raleigh via Selma?

A. One hundred and sixteen miles.

Q. What are the first-class passenger rates in North Carolina?

A. 3¼ cents per mile for first-class; 2¼ for second-class.

Q. What is the distance from Wilson to Raleigh via Weldon?

A. I can't tell without referring to time or distance tables, and I haven't them with me.

Q. Have you the tax returns by the Coast Line of its rolling stock, engines and passenger coaches?

A. Yes, sir.

(Plaintiff offered in evidence the tax returns of the defendant for the purpose of showing the value of an engine and cars necessary to compose a train. Defendant excepts.)

Q. Have you the report of the Atlantic Coast Line Railroad Company showing their net revenue from the trains operating in North Carolina for the past fiscal year?

A. Yes.

(Plaintiff offered to show from the said report the net revenue of the defendant corporation derived from its business in North Carolina. Defendant objected. Objection overruled.)

From said report the following appears:

Gross earnings from operation	$19,676,746.27	
Less operating expenses	11,889,596.99	
Income from operation		$7,787,149.28
183 Dividends on stocks owned	$769,548.00	
Interest on bonds owned	76,746.68	
Miscellaneous income, less expenses	306,657.66	
Income from other sources		$1,152,952.62
Total income		$8,940,101.62
Deductions from income:		
Interest on funded debt accrued	5,149,108.48	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	15,600.00	
Rents paid for lease of road	43,276.00	

Taxes	702,000.00	
Other deductions	22,060.60	
Total deductions from income		5,932,043.06
Net income		$3,008,058.54
Dividends, 5 per cent., common stock	$1,620,000.00	
Dividends, 5 per cent., preferred stock	94,075.00	
Total		1,714,075.00
Surplus from operations of year ending June 30, 1903		$1,293,983.54

184 Earnings from North Carolina Business.

Item.	Total receipts. Deductions, account of repayments, etc.	Actual earnings.
Passenger:		
Passenger revenue	$1,000,851.45	
Total deductions	10,582.58	
Total pass. revenue		$990,268.97
Mail		147,553.68
Express		129,790.78
Extra baggage and storage		9,454.72
Total passenger earnings		$1,277,068.15
Freight:		
Freight revenue	$3,491,388.93	
Less repayments:		
Overcharge to shippers	51,604.66	
Total deductions	51,604.66	
Total freight revenue		$3,439,784.27
Total freight earnings		$3,439,784.27
Total passenger and freight earnings		$4,716,852.42
Other earnings from operation:		
Telegraph companies		$3,059.12
Rents from tracks, yards and terminals		32,673.09
Other sources		115,372.86
Total other earnings		$151,105.07
Total gross earnings from operation:		
North Carolina		$4,867,957.49

185 Operating expenses—State of North Carolina:

Maintenance of way and structures	$735,448.96
Maintenance of equipment	529,714.16
Conducting transportation	1,520,122.33
General expenses	139,555.41
Total	$2,924,840.86
Total gross earnings from operation, North Carolina	$4,807,957.49
Total expenses, North Carolina	2,924,840.86
Net revenue from North Carolina	$1,943,116.63

Cross-examined.

By Mr. Pou:

Q. Mr. Woodard has not asked you about the shortest route from Greenville to Raleigh, has he?

A. No, sir; he did not, except indirectly.

Q. That is, he left out the short and has not said anything about what is the shortest way. Is it not by Kinston?

A. That is possibly the shortest.

Q. That is about 100 miles?

A. I had not made any calculation.

Q. He has asked you about what the passenger rates are in this State, 3¼ cents, but in competing points the longer route would be based on the shorter?

A. I think the road would be allowed to meet the rate of the shorter line at competitive points.

Q. One route is longer than the other, both run to the same place, it doesn't make any difference which is the longest, they are based on the shorter route from Washington, Greenville, Parmele and all of those places, although it may be longer by Weldon, the tickets are the same?

A. It is usual for the longer line of competitive roads to meet the rate at competitive points.

186 Deposition of H. S. Ward.

(By consent informalities and technicalities waived. Taken at Washington, N. C., April 21, 1904.)

I am a resident of Plymouth, N. C., and am a lawyer by profession. I go to Raleigh from necessity, to attend the supreme court, and other matters. My way of travel has always been via Selma. I always bought through ticket and paid four and 75/100 dollars for same, which is first-class.

I went to Raleigh in February, 1904, and asked for straight ticket to Raleigh from Plymouth via Selma, and could not get it.

The agent at Plymouth will not sell a through ticket from Plymouth to Raleigh via Weldon.

The agent at Raleigh has always sold a ticket to Plymouth via Weldon at $4.75.

I went to Raleigh in February, 1904, via Weldon; did not ask for ticket via Selma, because I knew of the break in the connection. I bought a ticket to Weldon, from Weldon to Raleigh, and found my fare advanced over the usual rate of $4.75; certainly as much as one dollar, and I think more than that amount. I complained of it to the agent at Weldon, and inquired the cause.

Cross-examined:

The time via Weldon to Raleigh is twenty minutes to half an hour later. I know that the fare from Raleigh to Plymouth via Selma or Weldon is same.

H. S. WARD.

It is agreed that the agent of the Atlantic Coast Line at Washington will testify that the price of first-class tickets from Washington to Raleigh is the same via Weldon or Selma; and that he does not sell tickets to points via Weldon beyond Raleigh, and sells there to points beyond Raleigh via Selma; and this shall be taken as his deposition and that his name is R. A. G. Barnes.

187 We agree that the foregoing depositions shall be read as evidence in the case of The North Carolina Corporation Commission vs. The Atlantic Coast Line.

April 21, 1904.

F. A. WOODARD,
Attorney for Plaintiff.
JAMES H. POU,
Of Counsel for Defendant.

Deposition of S. C. Bragaw.

(By consent informalities and technicalities waived. Taken at Washington, N. C., April 21, 1904.)

I am a resident of Washington, N. C., and am a lawyer by profession. I attend the supreme court at Raleigh, N. C., and go there on other business several times a year. I also have business in the Federal court at Raleigh.

Went to Durham in February, 1904. I left Washington on Sunday morning. I changed cars at Parmele, Weldon, Henderson and Oxford. I did not buy a through ticket to Durham. It is my best recollection that I asked for a through ticket, but the agent said he was not certain that the train on the Durham and Northern from Henderson to Durham ran on Sundays. At that time there was no Sunday train on the Durham and Northern and I went to Oxford

and took the Southern train to Durham. I had to stay in Oxford something over two hours and arrived in Durham about 7 o'clock in the evening.

The agent here sells a ticket to Raleigh via Weldon.

When I went to Durham I purchased a ticket to Weldon, then from Weldon to Henderson and from Henderson to Oxford and from Oxford to Durham. There were four of us in our party, two ladies and two gentlemen. I know it cost me more that route than from Washington via Selma to Durham.

It would be more convenient to the traveling public here to have the connection at Selma westward.

188 Cross-examined:

My information is that if I could have made connection on Durham and Northern I would have reached Durham about as early as if I had gone via Selma.

The inconvenience that day consisted chiefly of the extra costs of transportation and the fact that the Durham and Northern railroad did not run a train on Sunday and that caused quite a delay in reaching my destination.

STEPHEN C. BRAGAW.

The plaintiff also introduced the schedules of the defendant company, from which the following appears:

Train No. 39 is scheduled to leave Richmond, Va., at 9:05 a. m., arrive at Rocky Mount at 1:10 p. m.; leave Rocky Mount at 1:30 p. m.; Elm City, 1:49 p. m.; Wilson, 2:00 p. m.; Lucama, 2:17 p. m., Kenly, 2:30 p. m.; Micro, 2:40 p. m.; and arrive at Selma 2:50 p. m.

Train No. 40 is scheduled to leave Savannah, Ga., at 1:35 a. m., arrive at Selma at 2:02 p. m.; Micro, 2:12; Kenly 2:22; Lucama, 2:35; Wilson, 2:55; Elm City, 3:07; Rocky Mount, 3:50 p. m.

Weldon and Kinston.

		59	Miles.	Stations.	58		
		P. M.			A. M.		
		*3 15	0	Lv..... **Weldon** .....°Ar.	11 10		
		3 29	8	" ..... **Halifax**.....° "	10 55		
		3 35	9	" ..... **Pender**..... ° "	10 50		
		3 51	17	" ..... Tillery .....° "	10 32		
		4 00	21	" .... Spring Hill ..... "	10 24		
		4 13	27	" ....Scotland Neck ... "	10 10		
		4 28	34	" ..... Hobgood .....° "	9 55		
		4 42	41	" ..... Goose Nest ....° "	9 36		
		4 53	46	" ..... Hassell ..... "	9 25		
		5 15	52	" ..... **Parmele** .....° "	9 10		
		5 22	56	" ..... Grindool ..... "	8 56		
		5 39	64	" .....House ..... "	8 37		
		5 46	67	" ..... Greenville.....° "	8 30		
		5 57	73	" ..... Winterville ....° "	8 17		
		6 06	77	" ..... Ayden .....° "	8 09		
		6 21	84	" ..... Grifton .....° "	7 54		
		6 32	89	" .... Graingers..... "	7 42		
		6 45	95	Ar..... **Kinston** .....°Lv.	*7 30		
					P. M.		
		1 55	119	" ..... **Sanford** .....° "	*3 40		

189 Washington and Parmele.

79	23	71	Miles.	Stations.	24	70	78
P. M.	P. M.	A. M.			A. M.	P. M.	A. M.
‡4 00	†1 45	†8 00	0	Lv..**Washington**..°Ar.	11 10	**6 20**	10 15
4 12	2 01	8 12	5	" ....Wharton....° "	10 45	**6 07**	10 02
4 26	2 20	8 26	11	" ..... Pactolas....° "	10 25	**5 53**	9 48
4 39	2 38	8 39	16	" ... Whitchards ... "	10 05	**5 42**	9 36
5 00	3 10	9 00	25	Ar.... **Parmele** ...°Lv.	†9 35	†**5 20**	‡9 15

* Daily. † Daily, except Sunday. ° Telegraph station. ‡ Sunday only.

Rocky Mount, Wilmington and Florence.

	103	49	41	Mls.	Stations.	102	48	42	
	P. M.	A. M.	P. M.			A. M.	P. M.	A. M.	
.....	†4 10	*9 05	*7 25	....	Lv...**Richmond**...Ar.	.....	7 45	4 07	.....
.....	†8 02	*12 52	*5 17	0	" **Rocky Mount** ° "	9 00	1 55	11 10	.....
.....	8 12	1 50	5 27	1	" .S. Rocky Mount .° "	8 50	1 50	11 00	.....
.....	8 20	1 59	5 35	5	" ...Sharpsburg...Lv.	8 41	1 41	10 50	.....
.....	8 28	2 07	5 54	10	" ....Elm City ..° "	8 32	1 31	10 40	.....
.....	8 40	2 20	5 57	16	Ar.... **Wilson** ...°Lv.	8 20	1 16	10 25	.....
.....	8 40	2 20	5 57	16	Lv.... **Wilson** ....Ar.	8 20	1 16	10 25	.....
.....	.....	.....	....	19	" .....Sharon..... "	.....	.....	.....	.....
.....	8 48	2 32	6 06	20	" ...Contentnea..° "	8 10	1 07	10 16	.....
.....	8 54	2 37	6 12	28	" .. Black Creek..° "	8 05	1 01	10 10	.....
.....	9 06	2 49	6 24	30	" .... Fremont ...° "	7 53	12 47	9 58	.....
.....	9 12	2 56	6 30	33	" .... P[illegible]eville ...° "	7 48	12 41	9 52	.....
.....	9 25	3 10	6 48	41	Ar...**Goldsboro**..° "	†7 35	12 26	9 37	.....
.....	P. M.	3 15	7 31	41	Lv...**Goldsboro**...Ar.	A. M.	12 21	1 32	.....
.....	.....	3 32	7 47	50	" .....Dudley....°Lv.	.....	12 03	9 15	.....
.....	.....	3 43	7 56	55	" .. Mount Olive .° "	.....	11 52	9 05	.....
.....	.....	3 50	8 03	59	" .....Goshen..... "	.....	11 45	8 58	.....
.....	.....	3 56	8 08	62	" .....Faisons....° "	.....	11 39	8 52	.....
.....	.....	4 03	8 16	66	" .... Bowden ....° "	.....	11 31	8 44	.....
.....	.....	4 12	8 24	70	" .... **Warsaw**...° "	.....	11 22	8 36	.....
.....	. ..	4 26	8 37	77	" .... Magnolia...° "	.....	11 07	8 22	.....
.....	.. ...	4 36	8 46	83	" ....Rose Hill...° "	.....	10 57	8 13	.....
.....	.....	4 43	8 53	87	" .... Teachey .... "	.....	10 48	8 05	.....
.....	.....	4 47	8 57	89	" .... Wallace....° "	.....	10 44	8 01	.....
.....	.....	4 54	9 02	92	" .....Willard .... "	.....	10 37	7 55	.....
.....	.....	5 00	9 09	95	" ..S. Washington . "	.....	10 31	7 49	.....
.....	.....	5 13	9 21	102	" .....Burgaw....° "	.....	10 17	7 36	.....
.....	. ..	5 23	9 31	107	" .....Ashton..... "	.....	10 07	7 26	.....
.....	.....	5 30	9 36	110	" .. Rocky Point .° "	.....	10 01	7 20	.....
.....	.....	5 40	9 50	116	" .. Castle Hayne.° "	.....	9 50	6 59	.....
51	55	.....	.....	122	" .....Gorden..... "	54	9 39	.....	50
		5 54	10 04	123	" .. Union Depot .. "		9 36	6 56	
P. M.	A. M.	6 00	10 10	124	Ar..**Wilmington**.°Lv.	P. M.	*9 30	*6 50	P. M.

190 Norfolk, Rocky Mount and Wilmington.

		103	49	Mls.	Stations.	102	48		
		P. M.	A. M.		(By ferry.)	P. M.	P. M.		
....	.....	†4 00	*9 00	....	Lv. .....Norfolk .....Ar.	1 00	5 55	...	....
....	.....	.....	.....	0	" ...Pinner's Point..° "	.....	.....	...	....
....		4 32	9 34	6	" ..... Bruce .....°Lv.	12 26	5 16	...	....
...		4 36	.....	8	" ..... Boone .....° "	12 22	.....	...	....
....		4 45	9 46	12	" ..... Drivers .....° "	12 13	5 04	...	....
...		5 58	.....	15	" .....Nansemond .... "	12 07	.....	...	....
....		5 05	10 00	20	" .....Suffolk .....° "	11 58	4 49	...	....
....		5 15	.....	26	" .....Nurney ..... "	11 47	.....	...	....
....		5 23	10 20	31	" ..... Whaley.....° "	11 37	4 31	...	....
....		5 31	10 28	35	" ..... Drum Hill ..... "	11 29	4 23	...	....
....		5 37	10 35	38	" ..... Gates.....° "	11 22	4 17	...	....
....		5 43	10 46	46	" ..... Eure.....° "	11 10	4 05	...	....
....		5 54	10 52	49	" ..... Tunis.....° "	11 03	3 58	...	....
...		.....	.....	50	" .... South Tunis ...° "	.....	.....	...	....
....		6 10	11 12	58	" ..... **Ahoskey**. ...° "	10 47	3 43	...	....
....		6 16	11 17	61	" .....Earleys ..... "	10 42	3 37	...	....
....		6 25	11 26	66	" ..... Aulander.....° "	10 32	3 28	...	....
....		6 36	11 37	74	" ..... **Kelford** .....° "	10 20	3 16	...	....
....		6 47	11 45	78	" ..... Neal .....° "	10 11	3 08	...	....
....		6 57	11 53	81	" ..... Palmyra .....° "	10 02	3 00	...	....
....		7 95	12 01	88	" ..... **Hobgood**.....° "	9 54	2 53	...	....
....		7 16	12 09	93	" ..... Speed .....° "	9 46	2 45	...	....
....		7 27	12 21	100	" ..... **Tarboro**.....° "	9 33	2 33	...	....
....		.....	.....	105	" ..... Waldo ..... "	.....	.....	...	....
....		.....	.....	110	" .....Medora..... "	.....	.....	...	....
....		7 54	12 45	115	" ..**S. Rocky Mount**.° "	9 08	12 10	...	....
...		7 59	12 50	116	Ar... **Rocky Mount**..° "	†9 05	*1 57	...	....
....	.....	9 25	3 10	156	" .... **Goldsboro** .....° "	†7 35	12 26	...	....
....	... ..	.....	6 10	240	Ar....**Wilmington** ....Lv.	...	*9 30	..	....
		P. M.	P. M.			A. M.	A. M.		

No. 103 connects to Wilmington with No. 41 as above.

Rocky Mount and Spring Hope.

75		69		Mls.	Stations.	68		76	
†4 00	P.M.	†9 30	A. M.	0	Lv..**Rocky Mount**.°Ar.	12 10	P. M.	6 20	P. M.
4 23	"	10 20	"	10	" .....**Nashville**....°Lv.	11 45	A. M.	5 45	"
4 45	"	11 00	"	19	Ar.. **Spring Hope**..° "	†11 [illegible]	"	†5 15	"

* Daily. † Daily, except Sunday. ° Telegraph station. | Meals.

Plymouth and Rocky Mount.

65	Miles.	Stations.	64
A. M.			P. M.
*7 20	0	Leave..... **Plymouth**.....°Arrive	6 50
7 55	11	" .....Jamesville .....° Leave	6 15
8 20	22	" ..... Williamston .....° "	5 50
8 35	28	" .....Everett.....° "	5 37
8 45	33	" .....Robertsonville .....° "	5 27
8 57	37	Arrive. ..... **Parmele**. ..... ° "	5 20
9 10	37	Leave..... **Parmele** ..... .Arrive	5 15
9 20	40	" .....Bethel..... .....° Leave	5 07
9 33	45	" ..... Conetoe .....° "	4 55
9 41	48	" ..... Mildred ..... "	4 47
10 00	53	" .....**Tarboro**..... ...° "	4 35
10 28	. ...	Arrive..... **South Rocky Mount** . .....Leave	*4 00
A. M.			P. M.

191 Plaintiff also introduced the following statement showing the actual time of arrival of train No. 11 at Tarboro from Plymouth :

	Arr'd Tarboro.		Arr'd Tarboro.		Ar. Tarboro.
Jan. 1	Annulled	Feb. 1	5 30 p m	Mar. 1	6 45 p m
2	5 30 p m	2	5 37	2	6 50
3	Sunday	3	6 20	3	8 35
4	5 30	4	6 05	4	11 00
5	11 25	5	6 08	5	9 25
6	6 35	6	6 05	6	Sunday
7	5 35	7	Sunday	7	8 35
8	7 25	8	5 40	8	8 45
9	5 30	9	9 20	9	9 20
10	Sunday	10	8 10	10	9 40
11	5 55	11	7 52	11	10 33
12	6 45	12	9 10	12	6 05
13	6 15	13	7 10	13	Sunday
14	8 15	14	Sunday	14	10 45
15	6 00	15	6 05	15	7 20
16	5 58	16	7 30	16	7 25
17	Sunday	17	8 28	17	6 10
18	6 35	18	6 28	18	6 10
19	6 05	19	8 50	19	7 30
20	5 30	20	7 35	20	Sunday
21	9 05	21	Sunday	21	7 15
22	6 50	22	7 55	22	6 13
23	6 50	23	5 30	23	6 45
24	Sunday	24	12 05	24	6 15
25	6 00	25	9 27	25	6 10
26	5 50	26	10 10	26	5 30
27	7 10	27	7 52	27	Sunday
28	8 00	28	Sunday	28	8 35
29	6 00	29	7 15	29	6 40
30	8 50			30	5 45
31				31	5 36

192 Plaintiff also introduced the following arrival of train No. 59 at Kinston, month of January, 1904:

January	1	7:20	35
	2	7:10	25
	3	7:45	60
	4	.....	...
	5	7:58	13
	6	7:55	10
	7	7:40	55
	8	8:10	85
	9	7:39	54
	10	6:45	...
	11	7:36	51
	12	6:58	13
	13	7:15	30
	14	6:55	10
	15	6:53	8
	16	7:25	40
	17	6:50	5
	18	8:15	90
	19	7:15	30
	20	8:40	125
	21	7:40	55
	22	7:45	60
	23	7:22	37
	24	7:45	...
	25	7:00	15
	26	7:07	22
	27	7:53	73
	28	9:10	145
	29	7:40	55
	30	8:40	115
			1436

Daily average mins. late—48.

193 Month of February, 1904.

February	1	7:26	41
	2	7:02	17
	3	7:30	45
	4	7:33	48
	5	7:20	35
	6	7:32	47
	7	6:55	10
	8	8:30	105
	9	7:42	57
	10	7:49	64
	11	9:25	160

12	8:05	80
13	9:35	170
14	10:44	239
15	7:50	65
16	7:46	61
17	7:35	50
18	7:37	52
19	8:48	123
20	7:45	60
21	7:25	40
22	9:00	135
23	7:37	52
24	9:07	142
25	8:56	131
26	11:08	263
27	8:30	105
28	7:20	35
29	7:20	35
		2467

Daily average minutes late—85.

194

	No. 59. Due 6.45 p. m.	Arrived mins. late.
March 1	7:32 p. m.	47
2	8:23	98
3	7:55	70
4	8:17	92
5	8:43	118
6	7:54	69
7	7:35	50
8	7:22	37
9	7:10	25
10	8:12	87
11	8:30	105
12	8:07	82
13	7:10	25
14	7:30	45
15	7:18	32
16	8:55	130
17	7:22	37
18	7:28	43
19	8:57	132
20	8:05	80
21	7:40	55
22	7:08	23
23	7:15	30
24	7:05	20
25	8:10	12

26	6:57	12
27	8:02	77
28	7:30	45
29	7:53	68
30	7:53	68
31	7:15	30
		1917

Daily average minutes late—62.

195 The plaintiff also offered a statement showing the actual arriving time of the afternoon train from Spring Hope to Rocky Mount, from which appears the following, and the actual arriving time of said train at Rocky Mount for sixty days from January 27, 1904.

On Jan. 27 at 6.50 p. m.	Jan. 28 at 8.45	Jan. 29, 7.45
" 30 at 8.20 "	" 31 Sunday.	Feb. 1, 7.00
Feb. 2 at 6.50 "	Feb. 3 at 7.40	" 4, 7.35
" 5 at 7.35 "	" 6 at 6.50	" 7, Sunday
" 8 at 8.45 "	" 9 at 7.10	" 10, 7.45
" 11 at 9.00 "	" 12 at 8.00	" 13, 9.35
" 14 Sunday.	" 15 at 8.00	" 16, 7.15
" 17 at 7.45 "	" 18 at 7.55	" 19, 7.55
" 20 at 7.35 "	" 21 Sunday.	" 22, 9.00
" 23 at 7.35 "	" 24 at 10.00	" 25, 7.40
" 26 at 10.00 "	" 27 at 8.20	" 28, Sunday
" 29 at 7.45 "	Mar. 1 at 8.05	Mar. 2, 8.30
Mar. 3 at 8.30 "	" 4 at 9.10	" 5, 8.45
" 6 Sunday	" 7 at 7.55	" 8, 7.45
" 9 at 7.15 "	" 10 at 8.30	" 11, 8.40
" 12 at 8.00 "	" 13 Sunday	" 14, 6.40
" 15 at 8.00 "	" 16 at 9.20	" 17, 8.00
" 18 at 8.00 "	" 19 at 10.00	" 20, Sunday
" 21 at 7.30 "	" 22 at 7.05	" 23, 7.15
" 24 at 7.30 "	" 25 at 8.20	" 26, 7.15
" 27 Sunday.	" 28 at 7.45	

Also the following:

	To—	Via Selma.	Via Weldon.	Difference miles.	Cost.
Plymouth.....	Raleigh	137 miles	182 miles	45	1.46
Washington	"	126 miles	171 miles	45	1.46
Greenville	"	116 miles	161 miles	45	1.46
Tarboro.....	"	85 miles	151 miles	56	1.82
Wilson	"	54 miles	148 miles	94	3.05
Parmele.....	"	101 miles	146 miles	45	1.46

196

Plymouth.....	Durham	163 miles	181 miles	18	.58
Washington...	"	152 miles	170 miles	18	.58
Greenville.....	"	142 miles	160 miles	18	.58
Tarboro.....	"	111 miles	139 miles	28	.91
Wilson.....	"	80 miles	146 miles	66	2.14
Parmele.....	"	127 miles	145 miles	18	.58

Via Goldsboro is 19 miles further than via Selma.

Selma to Rocky Mount	41 miles
Rocky Mount to Plymouth	68 miles
Rocky Mount to Spring Hope	20 miles
Selma to Plymouth	109 miles
Selma to Spring Hope	61 miles

Exhibit (1.)

Rates of Fare to Selma, N. C.

From—	First class.	Second class.
Wilson	$ .80	$ .70
Elm City	1.05	.90
Rocky Mount	1.35	1.15
Nashville	1.70	1.45
Spring Hope	1.95	1.65
Tarboro	1.85	1.55
Williamston	2.90	2.45
Jamesville	3.25	2.75
Plymouth	3.60	3.05
Washington	3.20	2.70
Greenville	2.85	2.40
	$24.50	
Lucama	.55	
Kenly	.45	
13	$25.50	2.00
	26.00	

197 Also the following:

January, 1904.

No. 39 Arrived Selma. No. 40 Arrived So. Rocky Mt.

		p. m.	Mins. late.	p. m.	Mins. late.
January	1	3:50	60	3:37	12
	2	3:25	35	3:32	7
	3	2:55	5	4:05	40
	4	3:55	185	3:46	21

5	5:55	185	3:46	21
6	5:00	130	3:38	13
7	3:38	48	3:30	5
8	3:18	28	4:45	80
9	4:25	95	3:50	25
10	5:26	156	3:28	3
11	3:34	44	3:15	20
12	2:50	.....	3:25	
13	3:02	12	3:25	
14	3:03	13	6:07	162
15	3:27	37	6:37	192
16	3:14	24	3:58	33
17	4:00	70	3:32	7
18	3:51	1	4:53	88
19	3:39	49	4:14	49
20	5:35	165	5:39	143
21	3:10	20	4:34	69
22	3:13	23	3:57	32
23	3:19	29	3:45	20
24	3:50	60	3:35	10
25	2:55	5	3:25	
26	3:21	31	3:25	
27	3:10	20	3:35	70
28	3:05	15	5:26	121
29	8:35	345	4:12	47
30	5:00	130	5:13	108
31	4:15	85	3:30	5
		1984		1488

198 February, 1904.

No. 39 Arrived Selma. No. 40 Arrived So. Rocky Mt.

		p. m.	Mins. late.	p. m.	Mins. late.
February	1	3:08	18	3:35	10
	2	4:51	121	3:25	
	3	2:50	.....	4:17	52
	4	3:08	18	3:54	29
	5	3:14	24	4:08	43
	6	3:09	19	3:55	10
	7	4:20	90	3:25	
	8	2:50	.....	5:17	112
	9	2:50	.....	4:33	68
	10	2:55	5	4:21	56
	11	4:03	73	5:20	65
	12	4:06	75	4:33	68
	13	3:45	55	6:02	157
	14	3:49	59	5:45	140

15	2:58	8	4:45	80
16	3:09	19	3:34	9
17	3.57	67	4:10	45
18	3:36	46	4:28	53
19	6:52	242	4:42	7
20	4:34	104	3:35	10
21	3:55	65	3:57	32
22	2:50	.....	5:37	132
23	2:50	.....	3:48	23
24	3:10	20	5:34	129
25	3:17	27	3:49	24
26	4:58	128	6:35	190
27	4:40	110	5:15	110
28	5:07	137	4:07	42
29	2:50	.....	4:00	35
		1533		1801

199

March, 1904.

No. 39 Arrived Selma. No. 40 Arrived So. Rocky Mt.

		p. m.	Mins. late.	p. m.	Mins. late.
March	1	3:49	59	4:20	55
	2	5:54	184	4:55	90
	3	3:21	31	4:42	77
	4	3:06	16	4:56	91
	5	3:27	37	5:21	116
	6	4:35	105	3:58	33
	7	2:53	5	4:03	38
	8	3:15	25	3:42	17
	9	2:54	4	3:25	
	10	3:05	13	4:58	93
	11	3:06	16	4:15	50
	12	3:24	34	4:27	62
	13	3:05	15	3:35	10
	14	2:50	.....	3:44	19
	15	3:20	30	4:10	50
	16	2:50	.....	4:25	60
	17	3:42	52	3:35	10
	18	3:32	42	3:50	25
	19	3:24	34	5:20	115
	20	2:50	.....	3:25	
	21	2:50	.....	3:25	
	22	3:09	19	3:30	5
	23	2:50	.....	3:25	
	24	3:40	50	3:30	5
	25	3:35	35	3:40	15
	26	3:29	39	3:30	5
	27	3:31	41	3:25	
	28	2:50	.....	3:27	2

29	5:13	143	4:00	35
30	3:14	24	4:40	75
31	3:25	35	3:36	11
		1088		1164

200 Plaintiff also introduced the following:

Maj. F. K. Huger, general superintendent, Portsmouth, Va.

DEAR SIR: I enclose herewith statement showing dates and number of hours and minutes that train No. 241 arrived Durham late, from January 1st to April 1st, 1904.

January.

Date.	Hours.	Minutes.
2nd	0	25
4th	1	25
7th	0	20
8th	0	40
18th	0	20
22nd	0	30
23rd	0	30
28th	0	20
29th	0	45
30th	0	15

February.

Date.	Hours.	Minutes.
5th	1	25
6th	0	25
10th	2	50
11th	0	40
12th	3	20
13th	0	25
18th	0	50
24th	0	45
25th	0	45
26th	1	30

201 March.

Date.	Hours.	Minutes.
4th	0	30
5th	0	30
10th	0	30
12th	0	40
21st	0	40
24th	1	15
25th	0	40
26th	0	50
28th	0	45
29th	2	25
30th	1	25
31st	0	45

The plaintiff here rests.

The defendant introduced the following testimony:

B. R. LACY, witness for defendant:

Direct by Mr. POU:

Q. I will ask you this question—have you been lawfully subpœnaed?

A. Yes, sir.

Q. What official position do you hold?

A. Treasurer of the State.

Q. How long have you held that office?

A. Three years.

Q. What office did you hold in this State before that time?

A. Commissioner of labor.

Q. Before you were called to official position, what was your profession?

A. Engineer on the Seaboard.

Q. How long were you engineer?

A. Fifteen years.

Q. What was your run?

A. I ran out of Raleigh to Norfolk. I did run from here to Hamlet, but my last run was from here to Norfolk.

Q. Are you a member of the Brotherhood of Locomotive Engineers?

A. I am.

202 Q. Have you ever held a position in that order?

A. I have been a representative several times.

Q. Are you familiar with the rules, rates wages and customs regarding the running of trains with regard to engineers and other employees?

A. Yes, sir.

Q. Do you keep in touch with that community of people?

A. Yes.

Q. Can you give me these facts, first, on the main line where the standard is first-class, 42 miles of road, a three-car train and engines strong enough to make that run back and forth, with seven stops and two slow downs and meeting two or more superior trains, and doing that within three hours, I mention that to show the character required, can you give to the jury an estimate of the daily cost of running that train, I ask you for the cost of running that train separate from what is under the wheels, just from the wheels up—not just that particular train?

A. I think $12.05 the labor on that train and the oil and fuel.

Q. Can you figure the other expenses of running that train?

A. That is out of my line of business.

Q. Give the items of that labor, please.

A. Engineers on the Coast Line are paid mainly by the mile, none of the branch road men get under $3.75, but if they put a man

by the mile at $3.25 he will make $3.25 per day. I believe the railroad commission say that firemen average $1.38, but I do not know where they make that. My idea is it will cost $1.30 for the fireman, conductor $3.00, baggage man $1.50, two train hands $1.00 per day. The custom all over the United States for getting water is fifty cents per tank; it will take about two tanks of water; that is another dollar; and then the oil and waste will not run to quite a dollar, but that is generally estimated at a dollar. The total is close to twelve dollars.

Q. The labor, oil, water and waste is $12.00.

A. I forgot the fuel—coal 25 miles and a half to a ton of coal,
203 they should use, I think, nearly four tons of coal for a day's work—between three and four tons for this run.

Q. What does soft coal cost now?

A. I don't know—I figured it at $3.00 in making that estimate.

Q. If it is $3.00, that would bring the cost up to $12.00 something, and nearly $12.00 more for fuel?

A. Yes.

Q. What is the usual renting charge of an engine when rented from one road to another?

A. Ten dollars per day.

Q. How about cars?

A. I don't know.

Judge BROWN:

Q. Are railroads in the habit of renting stock?

A. Yes, that is the custom generally in the United States.

(Objection by plaintiff; overruled; exception.)

Mr. WOODWARD:

Q. Does the Coast Line rent engines?

A. I do not know that they do.

Mr. POU:

Q. Do you know what is the everage life of an engine—useful life?

A. I think it has been decided by master mechanics as fifteen years; they run over that, but I think it is considered fifteen years.

Q. Do you know what is the life of a car?

A. No, sir; I have no idea.

Q. Do you know what is the rule of railroads charging for the use of their track in detours, that is, one railroad has a wreck and has to send its trains over another road?

(Objection by plaintiff.)

Q. Do you know what is the cost of a first-class engine?

A. The last engine the Seaboard bought was $14,500.

Q. What is the value of passenger cars?

A. I don't know.

Q. An engine lasts fifteen years?

A. Yes.

Q. Have you made any estimate of what you think the cost of running this train, including the use of the equipment, wear and tear, labor, fuel and everything except trackage, would be a day?

A. I think $24.00; it was $12.00 for the labor, $12.00 for the fuel, which is $24.00.

204 Q. Including the wear and tear of equipment?

A. I don't know, sir.

Q. Have you made any figures about what the cost of running a train would be, including labor, oil, waste, water, fuel and the use of equipment, engines and cars, together with their wear and tear?

A. Between $42.00 and $45.00, but I don't know enough about the cost of these things to swear to it.

Cross-examined.

By Col. ARGO:

Q. All in excess of $24.00 you are uncertain about, and you can't speak with any degree of certainty about that?

A. I made the calculation, but I don't know positively about the figures.

Q. That $24.00 is the calculation based upon the assumption that the engine burned coal?

A. Yes.

Q. Would there be any difference in a wood-burner?

A. I don't know about that.

Q. How many cords of wood would it take?

A. Four cords, I think, for the 84 miles.

Q. You don't know what the four cords would cost?

A. No, sir.

Q. Do you know the usual price?

A. No, sir.

Q. Not over $2.00?

A. About $1.50, I think, but I am not sure.

Q. You have given the other items—I have put you down, engineer $3.25, fireman $1.30, conductor $3.00 a day's work, and two hands $1.00 each, oil and waste $1.00, and the wood $6.00, and the water $1.00?

A. Yes.

Q. That would cover all the actual expenses of running that engine a day?

A. Yes, sir.

Q. What is a day's work for an engineer before he begins to make over-time?

A. They make a basis of 100 miles or less to constitute a day's work; the Seaboard says 133, but the Coast Line says 100.

Q. That covers the whole day's work?

A. Yes, sir.

205 Q. After they run over 100 miles do they make over-time?

A. According to the miles—a branch-road man gets thirty cents an hour.

Q. After they have run 100 miles, if there is further work they get thirty cents an hour?

A. Yes, sir.

Q. The branch-road men are cheaper than the main-line men?

A. Yes, they make less money during the month.

Q. They put old engineers who are worn out on these branch lines at a reduced salary?

A. In my calculation I calculated at the lowest rate the Coast Line can possibly pay the engineer is $3.25—if you put that a branch road $3.75. I have worked with engineers on these contracts $3.90 for 12 hours work, irrespective of mileage.

Q. They pay $3.90 for a day's work of 12 hours—that is regarded as the run?

A. Yes, sir.

Q. It is so with the firemen and other employees?

A. Yes.

Q. An engine 17 by 24, 5-foot wheel, with engineer, fireman, conductor and two hands, two passenger cars and a baggage car, what would it cost to run that train 156 miles a day as a branch-road man?

A. Probably $4.00 per day. They are graded from $4.00 down to $3.90 and $3.75, according to the runs, but long runs are about $4.00; the fireman is about $1.30—the corporation commission puts it at $1.38—and the conductor about $3.00, that is the two hands about $1.00 per day each, baggage master $1.50 per day, oil and waste will be about $1.50, then the wood; they do very well to make 25 miles an hour.

Q. You take a first-class hand on a fine day, and he can run less?

A. He takes about seven cords of wood.

Q. $1.75?

A. I don't know—I guessed it.

Q. Does the baggage man do express duty?

A. I don't know whether he will or not.

Q. Isn't that the rule?

A. I don't think when they run 156 miles they do, these short branch roads do—they probably do on branch trains.

206 Q. The express company divided the expense of baggage man?

A. I don't know.

Q. How much for water?

A. They charge about fifty cents a tank, 150 miles it will take three and four tanks of water at fifty cents per tank.

Q. $25.80, that covers the whole 156-mile run?

A. Yes, if you are running it as a branch road.

Q. You say the last engine bought by the S. A. L. cost $14,500?

A. Yes, sir.

Q. That was a very fine engine?
A. Yes, sir.
Q. When was it bought?
A. Last year.
Q. What was the size of the engine?
A. 20 by 28.
Q. How about the wheels?
A. I think 6-foot wheels—either 5½ or 6.
Q. That probably cost two or three times as much as an old-fashioned wood-burner, wouldn't it?
A. I do not know what an old-fashioned wood-burner costs now.
Q. You do not know what a new-fashioned one costs except what the Seaboard pays—do you know of your own knowledge?
A. I was told at the depot—I got it from the Seaboard people.

Judge BROWN:

Q. Do you know what the average price of a good engine is?
A. They sell from ten to fourteen thousand dollars.

Col. ARGO:

Q. What *are* one of the old wood-burners worth?
A. If you go back far enough and make them small enough, you used to buy them from six to seven thousand dollars when they were new, but they were little engines, and would not do the work on this train.
Q. An engine 17 by 24, five-foot wheel, what would that cost in old times when they were building?
A. That engine ten years ago would cost eight or nine thousand dollars.
Q. One hundred and fifty-six miles a day is not an engine run?
A. It depends a great deal upon the work, but that is not too far to run.
207 They run from Richmond to the Hermitage every day, 160 miles?
A. I don't think they do every day; they may; 160 is not too much for them; it depends entirely upon the amount of work on that road and the time it takes to do it.
Q. Suppose it takes eight hours?
A. It ought to do it without any trouble.

Redirect by Mr. POU:

Q. I will ask you to look at this schedule—those even numbers—four columns there are northbound trains arriving at Rocky Mount, and being run between 1:05 and 4 p. m., they are the four schedules, the northbound train having the right-of-way—please look at the schedule and see if a new train could be put on, leaving South Rocky Mount at 1 o'clock or 1:05 and get to Selma with anything like regularity or certainty?
A. I am not going to answer—I just don't know.

Re-cross examined by Mr. WOODWARD:

Q. From South Rocky Mount to Selma is 40 miles. Could a wood engine, two passenger coaches and a baggage car run thirty miles an hour on track from Rocky Mount to Selma?

A. I am not familiar with that road.

Q. Is it in good condition?

A. If it is like the balance of the Coast Line it is.

Q. Couldn't that schedule, if made in 30 miles an hour, couldn't that train go 30 miles an hour, with necessary stops, taking off passengers?

A. No, sir.

Q. You have never run on that line?

A. I know it could not do it.

Q. Did you hear the engineer testify to-day?

A. No, sir, I did not.

Q. Could a train with two prssenger coaches and a baggage coach make the run from South Rocky Mount to Selma, including the necessary stops for taking off passengers, in an hour and twenty minutes?

A. Yes, sir.

208 Q. Could that be done with safety?

A. Yes, sir.

Mr. DAVIS:

Q. Could that be done including the meeting of a superior train for which you would have to take a siding at Elm City, and another superior train for which you would have to take a siding at Micro?

A. Yes, you can do it.

Mr. POU:

Q. You have stated to Mr. Woodward that you could make the schedule by running up to 45 miles an hour—that was predicted upon the idea that the trains you had to meet would *would* be on time?

A. Certainly. I figured on the figures you gave me.

Q. Now, if the trains which you had to meet should not be on time, every minute of their delay would diminish your chance of making the connection?

A. Yes, sir.

Q. And 45 and 50 miles an hour necessary to make the connection, you would be very near up to the maximum of safe speed, would you not?

A. Well, I might be near it, but run over 50 miles without any danger.

Q. But every minute that this northbound train was behind would reduce the probability of your making the connection?

A. Yes, that is true.

Q. And if they were much behind, you couldn't make it?

A. If they were much behind, you couldn't make it.

E. BORDEN, being duly sworn, testified as follows:

Examination by Mr. POU:

Q. Mr. Borden, you are an official of the Atlantic Coast Line, are you not?
A. Yes, sir.
Q. What position do you hold in that company?
A. General superintendent of transportation.
Q. Where are your headquarters?
A. Wilmington.
Q. How long have you been in the service of the Coast Line?
A. Thirty-one or thirty-two years.
Q. How long have you had charge of the transportation department of that road?
A. Since 1891, I think.
209 Q. Do you know the schedule that the Coast Line was directed to make, with an additional or new train, between Rocky Mount and Selma?
A. Yes.
Q. In your opinion, do you think it would be physically practicable to run that train on the schedule ordered by the commission?
A. That is, leaving Rocky Mount as soon after 12:50 as possible and getting to Selma at 2:25? No.
Q. To make the schedule and leave as soon as possible after 12:55, what governs the leaving point at Rocky Mount? What trains would you have to wait for?

(Objection; objection overruled.)

A. 49.
Q. How has 49 been running since it was put on?
A. I have the record here, and it has been reaching Rocky Mount late.
Q. How much?
A. Just to estimate it, 10 to 15 minutes a day.
Q. An average, then, of getting there at 1:00 or 1:05?
A. Yes.
Q. Why can't you get there sooner?
A. The starting point is Norfolk.
Q. What do you wait for at Norfolk?
A. It has boat connections, but the principal connection is at Portsmouth, and that fixes the leaving time. Cape Charles road is connected with the Pennsylvania road.
Q. What time does the boat get to Norfolk?
A. Can't answer.
Q. Instead of getting to Rocky Mount at 12:50, it is 1 o'clock when it gets there?
A. That is the record for several months.
Q. If you were to put on this additional train at Rocky Mount

and run to Selma and did not wait for the Norfolk train, would that new train do any good to eastern Carolina?

A. Yes; there is a train from Plymouth.

210 Q. Would it do the people of Norfolk to Tarboro any good?

A. No.

Q. From Rocky Mount to Weldon?

A. No.

Q. So it would serve only the train that came from Plymouth?

A. Yes.

Q. What is your opinion as to the practicability of making the schedule ordered by the commission?

A. Depends on circumstances as to how long we would have to wait. But I think this: Admitting or supposing that the train left Rocky Mount on time every day, adjusting the figures as ordered by the commission, there are so many difficulties in the way we would have to adjust it to conform to other conditions, and the governing schedule would be from Elm City and the speed from there to Selma would be so great, deducting stops, that I don't believe it is a practicable schedule even if the train left Rocky Mount on time.

Q. Please explain to the jury, in your own way, what conditions the new train would have to be run under, the difficulties in its way, the trains it would have to meet, the character of the trains, and other obstacles going to Selma.

A. Leaving Rocky Mount at 12:55, making a direct run to Selma, regardless of any conditions, it would meet two passenger trains between stations.

Q. Explain to the jury what that would mean in railroading.

A. It would meet at points with no provision to pass. The southbound would have to get out of the way and it would be a hard matter to estimate the number of freight trains.

Q. How many would be a fair average of freight trains this time of the year?

A. If on time, at least four—two passenger and probably four freights.

Q. Now describe to the jury where the new train would meet passenger trains.

A. Meets the first passenger at Elm City, leaving Rocky Mount at 1:05. The train it meeets is due at Elm City 1:31. This train supposed to be on the side-track before the leaving-time of that train.

Q. How far is Elm City from Selma?

A. 31.7 miles.

211 Q. Now how much schedule time would it leave this train to run?

A. It cannot leave Elm City until after the train leaving at 1:31 has gotten away.

Q. Suppose it is on time. Leaving there it has traveled less than an hour to get to Selma?

A. Yes; 54 minutes.

Q. And if that train No. 40 is five or ten minutes late it delays it that much more?
A. Yes. At Micro it meets No. 40.
Q. What train is that?
A. Northbound through train.
Q. How far from Elm City to Micro?
A. It is about 26 miles.
Q. Is the northbound train usually on time?
A. From the past three months' record I think not?
Q. Which train has right of way at Micro?
A. No. 40.
Q. Which train would have to take the side-track?
A. Under the rules the new train would.
Q. Then the next station is Selma?
A. Yes.
Q. Have they no turn-table at Selma?
A. No.
Q. Where is the nearest turn table?
A. Smithfield, 4½ miles beyond Selma.
Q. Are you permitted to use the Southern's Y at Selma?
A. The Southern has no Y.
Q. Is it available for you except in an emergency?
A. Except by permission or agreement.
Q. You have traced the run from Rocky Mount to Selma with regard to meeting passenger trains. Can you estimate where upon the schedule you would meet other trains?
A. On the schedule I have adjusted to meet conditions the freight train would be in sections.
Q. How many sections in the spring of the year?
A. Anywhere from one, two, three, may be four, and possibly five. The train 212 is due to leave Micro at two and due to arrive at Kenly at 2:17, so that two trains would cross between stations, therefore freight trains would have to remain at Micro to meet the new train and give a clear track.
Q. Could you get it through by 2:25 at all?
212 A. I could by side-tracking the passenger train at Kenly. You have to give the southbound the right of way.
Q. Which has right of way?
A. Northbound, of the same class.
Q. You say this truck train is running in sections?
A. Yes.
Q. Where does the first section side-track?
A. Kenly or Micro.
Q. What becomes of the other ones behind?
A. If they are within ten minutes they have forty minutes to get in to the side-track.
Q. What is the function of 212 and the other one, 208?
A. It is a train to carry perishable freight. It is a very fast freight. Its schedule speed is something over 20 miles an hour.

Q. What conditions do you regard in setting schedules?
A. Making the markets, and also the time fixed by the Pennsylvania road.
Q. What would be the effect of delay?
A. Missing the markets. It would be disastrous.

(Objection to "it would be disastrous.")

Q. What effect would it have on the New York markets?
A. It would be disastrous to truck.
Q. Does a delay affect other trains of a superior class?
A. Yes; one to three hours.
Q. Do you know the rules of the New York docks? At what time truck is received for the New York market?
A. At this season of the year they open at one a. m.
Q. We will discuss the practicability of that run with another view, (1) Can you leave Rocky Mount at 12:55, even if the train from Norfolk arrives on time—can you transfer baggage and passengers in time?
A. Yes, I think so.
Q. Would you gain anything in leaving Elm City?
A. Have to wait for 48. The schedule is lower from Rocky Mount to Elm City than from other points. We might leave there possibly five or ten minutes sooner.
213 Q. These trains you speak of are Coast Line trains?
A. Yes.
Q. If there no other railroad that has the right to run trains between Selma and Rocky Mount over that line?
A. The Southern.
Q. Does it exercise that right?
A. Yes.
Q. Not limited in the number of trains?
A. No.
Q. Has the right to run trains?
A. Yes.
Q. Describe the track, especially bet-een Rocky Mount and Selma, and Rocky Mount and Kinston.
A. It is one of the most congested in North Carolina.
Q. How down further south?
A. Still it is a busy piece of track.
Q. How far is it from Rocky Mount to Contentnea?
A. 18 miles.
Q. Have you a diagram showing the running of the trains between Rocky Mount and Selma, and have you also ad ded to that diagram the route that new train would have to make?
A. Yes.
Q. I would ask you to come down and explain it to the jury.

(Mr. Borden explains at length to jury, referring to map.)

Q. Mr. Borden, about how many trains a day pass over that track,

including freight, passenger, etc.? That is to say, from Rocky Mount and Contentnea?

A. For the months of January, February and March 30 a day.

Q. How will that number be affected during the height of the trucking season?

A. Increased, I think.

Q. Coming back to Selma. The train has arrived at Selma some time during the afternoon. Why can't you turn around at Selma?

A. No means of turning the train around.

Q. Why can't you use the Y of the Southern or arrange with it to turn around? What is the objection to using part of the main line?

A. I do not understand.

214 Q. What effect would it have if the main line was used for that purpose?

A. That would not affect it, except, of course, to block it.

Q. Do you know anything about the cost of the Y or turn-table at Selma?

A. $3,600.

Q. How long would it take to turn on the Y properly?

A. I am not an expert on that; I should say to just turn the engine, possibly five minutes. Whole train, about fifteen or twenty.

Q. After debarking your passengers at Selma, you would have to go back to Rocky Mount to make schedule at what time? When does the Spring Hope train leave?

A. Four o'clock.

Q. To make connection with Spring Hope, what time should you get back?

A. 3:55.

Q. Have you any record or report of the number of passengers who bought tickets on the Coast Line railroad for points on the Southern during the last month or any other time?

A. I have a copy here of the report I furnished Mr. Davis.

(Witness refers to report. Report put in evidence, marked Exhibit "P.")

Mr. WOODWARD: This way, Mr. Borden?

A. Yes.

Q. Mr. Borden, give us a summary of that. How many passengers have been on each train a day for the last month?

A. Train 49, passengers per trip 29–32—less than one passenger.

Q. What train is that?

A. 49. Next train is No. 41, early morning train from Rocky Mount to Wilmington, leaves Rocky Mount 5:17. Total number of passengers 121, average 3 5-6 a day. Train No. 31, Richmond to Smithfield, 149 for the period, or averaging 5 14-27. No. 39, running from Washington to New York, 40 for the month, or 1¼ a day. Train 103, from Norfolk to Goldsboro—a night train—26

passengers, averaging 26-27 a day. No. 58, via Weldon—runs from Kinston to Weldon—total 61, or 1 29-32 a day.

215 Q. The grand total of movement from your territory to all Southern railroad points has been what in the last month?

A. These figures are for Southern railway points, March 20 to April 20, inclusive.

Q. Makes an average of twelve a day?

A. Yes.

Q. Do you know what the fare is, first-class?

A. Not in my department.

Q. Mr. Borden, if this new train were put on and it and No. 39 both ran on schedule time, how far would this new one run in front of 39?

A. As the schedule is adjusted, it would leave South Rocky Mount 255 minutes ahead.

Q. How far apart would this and the new train be?

A. Ten minutes apart.

Q. The new train and No. 40?

A. Some ten minutes. They get in Selma within ten minutes.

Q. Would that be about their running time?

A. No. 40 is due to leave Selma at 2, and this train does not get there until 2:25; he has to turn around. About that much. The time between the schedule is 25 minutes.

Q. Do Nos. 39 and 40 do local work, stopping at every station?

A. Yes.

Q. If both were on time, where would the new train meet No. 40?

A. At Micro.

Q. Have you any reports showing the amount of travel over the Coast Line points in northeastern Carolina to Southern railway points before this connection was broken?

A. Yes. Here is the statement furnished the general manager by the auditor—number of passengers for six months prior to breaking connection—April, May, June, July, August and September.

Q. What was the result of those reports for April, May, June, July, August and September before connection was broken?

A. April, 197; May, 265; June, 306; July, 358; August, 376; September, 659.

Q. The total for six months was how much?

A. 2,161.

216 Q. What train is No. 39?

A. 39 is the train due to leave Rocky Mount at 1:30 and get to Selma at 2:50.

Q. Now, the train No. 58, from Kinston to Parmele, Hobgood and Weldon—have you got that?

A. Yes; for October, 148; November, 150; December, 120; total for the three months, 318.

Q. They are for all points on the S. A. L. via Weldon, are they?

A. Yes, sir.

Q. Train No. 51?

A. Since connection was broken, that is the Richmond and Smithfield, "Shoo-fly," reaching Selma at 9:25.
Q. What is the movement since the connection was broken?
A. October, 213; November, 79; December, 132.
Q. Grand total?
A. 424.

(Defendant puts in evidence certain tabulated statements with reference to moving passengers.)

Q. Mr. Borden, there is some question about the use of mileage books; that the men who use them are not shown on there?
A. I have a blank here on which reports are made.

(Witness tenders blank. Blank put in evidence, marked Exhibit "U.")

Q. I will ask if you have had investigation of movement of passengers—as to where they were going—recently by Mr. Lucas?

(Objection.)

Q. Mr. Borden, there being some misunderstanding, I will not at this time question you further about these reports. You may put them up if you wish. I will ask you to take up the question of railroad facilities for persons in eastern and northeastern North Carolina on the Coast Line. I will ask you to explain to the jury. (Witness explains map.)
Q. There was some evidence about the exceedingly early hour that the train from Rocky Mount passed Wilson. Was that the old schedule?
A. The schedule was changed at the request of the commission in order to restore connection at Goldsboro.
217 Q. It makes it an hour later?
A. An hour and a half later.
Q. When was the change made?
A. It may have been the latter part of September or the first of October of the last year.
Q. Your schedules now, with regard to the passing of No. 39 at Selma, is about what it has been for how long?
A. Since 1893.
Q. Does your train get to Selma about the time it has been scheduled to get there for the last ten years?
A. Practically. Not a variation of 15 minutes in ten years.
Q. Is there anything else that you think of that you think would make the matter any clearer to the jury?

(Witness explains map again. Map put in evidence, marked Exhibit "Q.")

Q. There are three routes a day?
A. Yes.

Cross-examination by Mr. WOODWARD:

Q. You say the arriving time at Selma of No. 39 has been about 2:50 or 3:00 ever since the road was completed?

A. Yes; has not varied 155 minutes.

Q. The route for Raleigh and points west for the people in eastern Carolina was via Selma?

A. Yes, it was the most direct route.

Q. It was the most important connection for the people of eastern Carolina?

A. It was a very convenient connection.

Q. It was the principal outlet for passengers from eastern Carolina to Raleigh and other points on the Southern?

A. Yes.

(A discussion as to distances and reference to map.)

Q. We will come down here and take the people of Edgecombe county. Before the Selma connection was broken these people left Tarboro at 12 and reached Raleigh via Selma at 3:50. Now, what is the distance from Tarboro to Raleigh via Selma?

A. Eighty-five miles.

Q. What is the distance from Tarboro via Hobgood and Weldon?

A. One hundred and forty miles.

218 Q. What is the difference?

A. Fifty-five miles.

Q. So the people of Edgecombe adjacent to Tarboro would have to leave Tarboro on the morning train at 9:30, change at Hobgood, change at Weldon, reaching Raleigh at 3:50 in the afternoon. You heard the witnesses testify that you could not buy a ticket from Tarboro to Raleigh via Weldon?

A. Possibly; I don't recall it.

Q. Upon the mileage basis it would cost $2.50 to $3.00 more for people living in the vicinity of Tarboro?

A. Only supposition?

Q. As I understand, the only through train that these people have to go to Raleigh leaves at 7:30 at night, getting to Rocky Mount and changing there and reaching Raleigh at 11:35?

A. That is the most direct route. Of course there are other trains, but you have to lay over.

Q. Take the people of Spring Hope and Nash county and the people of Whitaker—the only opportunity that they have of getting to Raleigh is to leave at 12 in the day?

A. Spring Hope at 11, Nashville at 12, and Rocky Mount 12:10, remain in Rocky Mount until 8 at night. You would have to remain at some point on the line, either Rocky Mount, Goldsboro or Selma, from 12:10 till 8.

Q. Reach Raleigh at 11:45 at night?

A. Yes.

Q. Now, before the Selma connection was broken, you reached Raleigh at 3 in the afternoon?

A. Provided we made connection.

Q. Now, there is another train, as I understand, leaving Spring Hope at 5:15. That is due at Rocky Mount at what time?

A. 6:20.

Q. If that is on time, you connect at Rocky Mount with the 8:05?

A. Yes.

Q. And then you took that train coming down and connecting with the night train to Raleigh?

A. Yes.

Q. What if you missed that?

A. The train waits 30 minutes.

219 Q. When was that order made?

A. Seventeenth of this month. Prior to that time that was not so.

Q. Prior to that time, if you did not arrive at Rocky Mount by 8:05 you missed that connection?

A. No. It is just this: There is a schedule note that the Norfolk train and the Richmond train shall wait ten minutes for each train. We can not endanger this train any more than we can help.

Q. I will ask you if that Spring Hope train has been delayed in the last four or five months at Rocky Mount?

A. One, two, three or four times in January it possibly missed connection.

Q. If the Spring Hope train due to arrive at Rocky Mount reached Rocky Mount after 8 o'clock prior to this new schedule, passengers would have missed connection at Rocky Mount?

A. Yes, on general principles.

Q. So, if on the 8th of February that train arrived at Rocky Mount at 8:45, on the 11th at 9:00, and on the 26th at 10:00, on the 3d of March at 8:30, etc., those passengers from Spring Hope would have missed connection at Rocky Mount?

A. No, if the other trains were on time.

Q. You say your schedule for 39 is now about the same as for the past fifteen years?

A. Ten years, sir.

Q. Now, I will ask you this: If, as a matter of fact, prior to the Southern moving up 25 minutes, if that connection at Selma was not a very uncertain one on the part of the Coast Line?

A. I would say yes.

Q. The failure of people from eastern Carolina to get to Selma prior to October was due to the failure of the Coast Line's No. 39 to reach Selma on time?

A. Yes.

Q. If your 39 arrived at Selma on time, you would make connection every day?

A. Yes.

Q. And the failure to connect at Selma was due to the failure of your train to reach Selma at 2:50; for instance, on the 29th of January, 39, this train, arrived at Selma 3:45?

A. Yes.

220 Q. It arrived on the 30th at 5?

A. Yes, that is taken from the record.

Q. You say that the people from Greenville coming to Raleigh can go down to Kinston on your train?

A. Yes.

Q. That is dependent upon their making connection at Kinston with the Atlantic and North Carolina?

A. Certainly.

Q. How long does the train have to wait at Parmele for the train from Rocky Mount to Plymouth?

A. Waits three hours, unless it has instructions to the contrary.

Q. I will ask if this connection is not an uncertain one by reason of No. 40 being frequently late at Rocky Mount, and if the arriving time of your train at Kinston does not show that frequently you missed connection?

A. There are several things that govern the late arrival of the train at Kinston.

Q. Is it not a fact that the Plymouth train has to wait for No. 40?

A. Yes, two hours.

Q. When it waits two hours, the connection is broken at Kinston?

A. I would say that on general principles it would be, that is, if the train got to Kinston two hours late. There is fifty minutes margin between the arriving time of our train and the leaving of the A. and N. C., just how long the Southern will wait for the A. and N. C. I don't know.

Q. If your train was ninety minutes late, you would not make this connection?

A. No.

Q. When No. 40 is more than two hours late—No. 40 is the northbound train—you failed to connect at Rocky Mount? Are not passengers delayed there for Tarboro, Washington and Kinston?

A. Till the following morning.

Q. If this Spring Hope train is extended out to Selma, it would follow No. 40, if on time?

A. Of course the assumption is that it gets there on time.

Q. How much would it be—how many minutes following?

A. No. 40 is due to leave Selma at 2. This train would not

221 get there till 2:45; could not leave Selma until 2:50 on account of No. 39 being due there. It would follow in fifty minutes.

Q. Do you know Mr. Swindell?

A. Oh, yes, of course.

Q. He is a reliable engineer, is he?

A. He has been in the service some fifteen or twenty years.

Q. Does not the "Shoo-fly" get into South Rocky Mount at 12:45?

A. Yes.

Q. If this extension is made, could not your Spring Hope train meet the Norfolk train at South Rocky Mount and the passengers on the Rocky Mount train be transferred to this train?

A. Why, yes, it could be done, of course.

Q. Would it enable this train to leave earlier?

A. It might enable them to leave five minutes earlier.

Q. The principal travel from eastern Carolina to Rocky Mount is on the Plymouth train?

A. I presume so.

Q. The Plymouth train would bring to Rocky Mount people from Washington, Plymouth and from that tier of country?

A. Yes.

Q. No. 39 is scheduled to leave South Rocky Mount at 1:30 and reach Selma at 2:50?

A. Yes.

Q. If this train is extended, then you would leave Rocky Mount upon the arrival of the Norfolk train, which is due to arrive at South Rocky Mount at 12:45?

A. Yes.

Q. Could not passengers be transferred to this new train at South Rocky Mount?

A. Certainly; but under the present arrangement the train does not come down to Rocky Mount. The passengers would walk to the other depot.

Q. If it left Rocky Mount at 12:50, the arriving time at Selma is fixed at 2:25, and in a delay the Southern is required to hold their train until 2:40. So leaving Rocky Mount at 12:50, arriving at Selma at 2:40 would give you one hour and fifty minutes to make the run of forty miles?

A. Yes.

Q. Is No. 39 a very heavy train?

A. Runs 8 to 10 cars.

Q. On this extended train it would only be necessary to have two passengers and a baggage car?

A. That's right.

222 Q. You do not use any except good engines, do you?

A. Smaller and less power, some of them.

Q. This No. 39 carries two express cars and a large amount of mail?

A. Yes.

Q. Your No. 39 makes it in one hour and thirty minutes?

A. Yes, that is the schedule.

Q. You advertise that to the public?

A. The schedule I have reference to is for the information of the employees.

Q. Is it not in the circulars or folders?

A. I have not examined the folder minutely?

Q. Is there not a Y at Selma?

A. My impression is that the Southern uses it for the transfer of freight. It could be used with the permission of the Southern.

Q. Does the Southern transport its freight cars from Selma to Norfolk?

A. Yes.

Q. That Y could be used with the consent of the Southern?

A. Yes, of course. The track that makes the Y is owned jointly—half and half—I think.

Q. Could it be used by your company?

A. If we made arrangements with the Southern. We have the same question with the Southern at Hardyville, S. C.

Q. Speaking of these trains—this extended train would meet—you spoke of No. 212. What kind of train is that?

A. We call it our "fast through train." It stops at only one point between Rocky Mount and Florence, S. C.

Q. Is Florence the only place it takes on freight?

A. Florence and Elrod.

Q. Where is Elrod?

A. About twenty miles south of Fayetteville.

Q. In this State?

A. Yes.

Q. You say it carries freight?

A. Yes; it is in one, two, three and probably more sections. All of the first sections move ahead when they enter North Carolina. There is a great amount of perishable freight at Chadbourne.

Q. This Spring Hope extended train could pass it at Micro?

A. Yes.

223 Q. How far is Micro from Selma?

A. Five miles.

Q. Where is the second section when the first gets to Micro?

A. Under the rules, a train can close up five minutes at a meeting point. It would be possible for two to go to this meeting point and the other ones would stay at a siding.

Q. Would it interfere with this particular train?

A. No, but this particular train would interfere with it.

Q. Under the schedule you have, this passenger train would pass No. 212 at Micro?

A. It would meet it at two.

Q. If this train is run in sections, it would not meet any other until it got to Selma?

A. It would be due to meet them all at Selma.

Q. Would it meet No. 40 at Micro?

A. Provided No. 40 was on time.

Q. If No. 212 was on time?

A. Well, 212 being a freight train, would have to keep out of the way of this passenger train.

Q. If this train No. 40 was on time, would this train pass it at Micro?

A. Yes.

Q. The times No. 40 is more than twenty minutes late—where would this train pass No. 40 at?

A. Selma. The days that No. 40 is more than twenty minutes late, this train would reach Selma before No. 40 got to Selma. That would be by telegraphic order. There is no telegraph office at Micro now.

Q. Is there at Kenly?

A. Yes. There are a great many intricacies about this matter. No. 40 is due to arrive at Selma at two. It has to stop at crossing, pull up and put off passengers, express and mail. While it may not be a daily thing, there is a possibility that it might be five or six minutes late, or something transpire by which the train could not proceed any further. Here is the point: No. 40 coming up to Selma can not arrive and depart five minutes late without delaying the special train.

224 Q. Under normal conditions, when No. 40 is late at Selma, would the special train reach Selma before it left?

A. No.

Q. You say that this No. 212 is due to arrive at Micro at what time?

A. Two o'clock.

Q. In your schedule, then, you would put No. 212 on the siding in order that this special train could pass?

A. Yes.

Q. What time is 212 due at Kenly?

A. 2:17.

Q. Does it have to side-track at Kenly?

A. Yes. Follows No. 40 in ten minutes; stays there from 2:17 to 2:43.

Q. It is five miles from Micro to Kenly?

A. Yes.

Q. If No. 212 went into the siding at Micro, how long before it could get out?

A. It would follow No. 40 in ten minutes, if nothing was in the way.

Q. Would it leave Micro on the arrival of No. 39?

A. Yes, sir.

Q. It would only have to stay at Micro in time for 39 to run five miles?

A. From the time it arrived at Micro till it left.

Q. What time would 212 leave Kenly?

A. It follows 40 in ten minutes, which is 2:14. It would leave Kenly at 2:44.

Q. What time does 39 get to Micro?

A. 2:40.

Q. How long would it take to get to Kenly?

A. Fifteen minutes.

Q. The maximum?

A. Something over twenty miles an hour.

Q. Would 212 have a clear track to Wilson?

A. It would have practically a clear track, but would probably meet a great many trains which would delay it more or less.

Q. This extended train—assuming it gets into Selma at 2:25—how long would it take to get on the Y and start back?

A. Depends on circumstances. You understand when that train gets to Selma it is no longer a train. Has no rights to the main line. It becomes an extra train. If there are any trains over-
225 due or any due, he could not use the main line without delaying them, or possibly run the risk of an accident; that is, without special order.

Q. If that train arrives at Selma at 2:25, leaving there at 2:50 or 3, what time would it reach Rocky Mount?

A. 4:15 or 4:20.

Q. Would not the net earnings derived from passenger traffic in North Carolina pay the expense of establishing and running a special train from Rocky Mount to Selma without interfering with the payment of fixed charges of the defendant and the dividend now being paid?

(Objection by defendant, and the question is reserved by the court.)

E. BORDEN, re-examined for defendant.

Mr. POU:

Q. If the trains were all running behind what effect would that have on your truck train 208?

A. It would delay those trains also.

Q. What condition would you find on the track with 208 delayed as much as half an hour?

A. I don't catch it.

Q. If 208 which is due at 12:30 which is half hour late or more what effect does that have upon the practicability of getting this new train through on schedule time?

A. It would mean that 208 with sections could not reach Raleigh before this train is due to leave, that they would have to keep clear of that schedule.

Q. They ask about the number of changes the persons of this country make to Raleigh by Weldon, if persons take the Coast Line on branch between Kinston and Weldon how many changes do they make?

A. One.

Q. The same persons going to Raleigh by way of Selma how many changes would they make?

A. Three.

Q. Would the same conditions exist on the Plymouth and Norfolk branches?

A. There would be 2 instead of 3, the same from Washington.

226 Q. From Norfolk to Rocky Mount would be how many?

A. From Norfolk would be 1 change.

Q. The train runs solid from Norfolk to Wilmington, the 2nd train runs solid from Norfolk to Goldsboro—you mean from eastern North Carolina there would be 2 from Welden and 3 from Selma?

A. From Plymouth to Raleigh and Washington to Raleigh via Weldon there would be 2 changes, going the other way Washington we change at Parmele and again at Tarboro and one at Rocky Mount and one Selma—four.

Q. So far as the convenience of the route the route by Weldon is better?

A. Yes, sir.

Q. In this territory we discussed state whether there is a single point on your line where people do not have 2 trains carrying passengers each way every day on these lines?

A. There are 2 trains in each direction carrying passengers.

Q. Mr. Woodward has asked you about the running of the Plymouth or of the Spring Hope trains to Selma, in your opinion is it practicable to run either of those trains upon this schedule?

A. I would say not—in the first place I would think that the run from Plymouth to Selma too much to be expected from any crew or engine, in the other case in addition to making 4 trips on the Nashville branch that engine is required to shift in the Rocky Mount yard.

Q. What kind of burners are those 2 engines?

A. Wood burners.

Q. Is the track between Selma and Rocky Mount equipped with wood racks?

A. No, sir.

Q. If this order became effective and you were compelled to run a track from Rocky Mount to Selma in the hours named how would you do it?

A. With a new train.

Q. The two truck trains that carry truck from the truck sections are 208 and 212?

A. Yes, sir.

227 R. E. SMITH, witness for defendant, being duly sworn, testified as follows:

Q. You are an employee of the A. C. L.?

A. Yes, sir.

Q. What is your position?

A. Assistant to the general manager.

Q. How long have you been connected with the Coast Line?

A. About 9 years.
Q. How long have you been engaged in railroad business?
A. About 22 years—21 or 22.
Q. What did you start at?
A. Apprentice in the machine shops.
Q. What next work did you do after you came out of the shops?
A. After learning my trade I was made foreman in charge of one of the shops on the N. and W., afterwards road foreman of engines on the same road.
Q. You came to the A. C. L. in what position?
A. Fuel agent.
Q. Then next what position did you have?
A. Superintendent of motive power.
Q. Your vocation then is mechanical from your apprenticeship up?
A. Yes.
Q. You have heard the testimony in regard to running this additional train from Rocky Mount to Selma consisting of an engine, tender of course, baggage car and 2 passenger coaches—I wish you to tell us what the daily cost and expense to the company would be to run that train from Rocky Mount to Selma and back?
A. Well the cost of running that train is made up of certain items of wages, fuel, oil, etc.
Q. Do you know what the general rule of a railroad company is in ascertaining the cost per mile of running its revenue trains?

(Objection by plaintiff. Overruled. Exception.)

Q. What is the method of ascertaining the expense per mile of a railroad company in operating its revenue trains?
A. That is found out by taking the cost of operation and dividing by the number of train miles.
228 Q. Do you know what the average cost to the A. C. L. Ry. Co. during the last year of operating its revenue trains per mile, if you do know state what it is?

(Objection by plaintiff. Overruled. Exception.)

A. $1.02 per mile.
Q. Coming down to this particular train I want you to state what the cost to the company will be to run that particular train per mile from the track up, have you made a careful estimate and calculation as to that?
A. Yes. There are several elements entering into the cost some of which may be called visible cost, those that can be arrived at readily and are apparent on the face—there are other costs in connection with the train that are not so evident but which are also actual costs. The addition of this train service will entail increased cost in every department connected with the railroad. I find the visible costs to be fifty-one cents per mile.
Q. What are the visible costs?
A. They are the costs of the wages of the crew, fuel, water, lubri-

cation, supplies, repairs and all the expenses not including any maintenance of track or any of the relative costs which I have denominated as unapparent costs.

Q. Give it to us in detail?

A. I may have to refer to some memoranda which I have made. For this class of service we usually pay the conductor $3 per day, the baggage master $50 per month, I have grouped the baggage master, porter and flagman which amounts to $4.15 per day, the engineman $3.25 per day, fireman $1.25 per day, that makes a crew of 6 whose combined wages are $11.06 per day. The oil, waste, brasses, repairs to 3 passenger cars costs $2.50. Repairs, tools, stores, oil, waste and the terminal attention, hostling of the engine at the terminal costs $3.67 per day, fuel for the locomotive $10.50 per day. Cleaning of the passenger cars and other terminal attention necessary to a train of this character $3.00 per day. The turning of the locomotive at the opposite end of the run, either at Selma or wherever it is turned $1.00 per day, water forty-five cents per day.

229 Q. How many tanks have you?

A. I have estimated for that run 5,000 gallons of water.

Q. How much in a tank?

A. From 3,500 to 5,000, but I estimate from my experience that 5,000 gallons would be consumed on that run. The water, ice and heating of the train will cost $1.35 per day. The interest and depreciation of a new locomotive provided for this train would be $3.61 per day. The interest and depreciation on the three passenger cars $5.13 a day, taxes and insurance on the passenger cars and the engine twenty-three cents per day—that makes a total of $43.01 per day. That divided by 84 miles the distance of the round trip is fifty-one cents and two mills per mile. In addition to that the other charges which I have mentioned and which cannot be shown on a statement of that kind amount to twenty-five cents per day, making a total of seventy-five cents per mile.

Q. You have included on that estimate the interest and depreciation upon the purchase price of an engine?

A. Yes.

Q. Why do you do that?

A. In order to run this train it will be necessary for us to assign equipment to it, that will take from our present equipment an engine and three cars, we will have to replace that equipment by the purchase of new equipment.

Q. In other words you will have to buy the new equipment to put on this run?

A. Yes, sir. I have set down the cost of the new engines at $12,000, new and modern engines are costing anywhere from $12,000 to $25,000, some locomotives purchased recently cost $25.00- *dollars*, some of our engines have cost considerably in excess of $12,000, I have put $12,000 as a conservative, careful and safe estimate of what a new locomotive would cost.

Q. What term of life do you assign to an engine?

A. I have estimated the life of an engine at twenty years. Of course there are engines that do not last that long. A great deal depends upon the character of the service, but from my ex-
230 perience and observation I feel confident in saying that twenty years is the safe estimate of the life of an engine.

Q. That is the inside or outside?

A. I should say the outside for the efficient life of an engine.

Q. At what do you place the value of the purchase price of a car?

A. I put the coaches at $7,000 each and the baggage car at $3,000.

Q. If the company was compelled to make this new run from Rocky Mount to Selma either by extending the run of the Spring Hope train or by extending the run of the Plymouth train or by putting on an additional train what would be done?

A. We would put on an additional train.

Q. Why?

A. For the reason that the service would have to be reliable as I understand the order, we would have to leave Rocky Mount at a definite time.

Q. In regard to that Spring Hope train, has the crew in the engine of that Spring Hope train any other duties to do besides running from Spring Hope to Rocky Mount and return?

A. The Nashville branch train is engaged in shifting in connection with its work and would not be available for this service.

Q. Does that include the entire crew?

A. Yes. In the case of the Plymouth branch train the run would be too long and we would have to provide an additional train, none of those trains would be available for this service.

Q. Do you know whether the Atlantic Coast Line has any wood station between Rocky Mount and Selma?

A. It has not.

Q. Does it run any wood-burning engines between Rocky Mount and Selma?

A. It does not.

Q. Do you know whether the engines on the Spring Hope branch and Plymouth branch are wood burners or coal burners?

A. Wood burners.

Q. Do you know whether the Coast Line has any turntable or facilities for turning the train at Selma?

A. It has not.

231 Cross-examined by Mr. BUSBEE:

Q. In estimating the general cost of operating trains by the A. C. L. Ry. I understand you to put the cost at $1.02 per mile; how do you get that?

A. I think I explained it by saying there are only two items that enter into it, the cost of operation and the number of train miles run during the year.

Q. What is the cost of operation generally. I understood that to be a general question and general answer as to the cost of operating trains by the A. C. L. What is the cost of operation?

A. I have not that figure in my mind.

Q. How do you get the $1.02 and the items that constitute it?

A. I found it by dividing the number of train miles into the cost of operation.

Q. What is the cost of operation and the items that made up that cost?

A. I could give you that if I had the figures in my mind, the only figure that I retained was the cost per train mile.

Q. You have stated to the court and the jury that the cost of operating trains is $1.02 and that you have arrived at that figure by dividing the gross cost of operating trains by the number of miles covered—what was that gross cost?

A. I cannot give you that.

Q. What is the amount of the gross cost of operating trains and the items that go to make up that cost?

A. I can't give it to you; I haven't it in my mind; I have explained how I got at it.

Q. What items go to make up the aggregate of the gross cost which you divide by the number of miles?

A. I can't give you that at this time.

Q. Then you can't explain to the jury how you arrive at that cost?

A. I can explain the method.

Q. I am speaking of the calculation in figures by which you arrive at the statement that you have just made that the cost is $1.02?

A. I can't remember those figures.

Q. You might have included a great many items in that cost that we would not agree to.

232 Judge BROWN: I understood you to say that the cost of running this character of train would be seventy-five cents per mile?

A. Yes, sir.

Q. I understood you to say that the cost of running this train is based upon the assumption that the road would be — train or such other train as would be put to this service?

A. Yes, sir.

Q. And you calculated upon the idea that the road would have to purchase new engines and new cars for the use of this train or such other train as would be put to this service?

A. Yes, sir.

Cross-examination by Mr. BUSBEE:

Q. What time does the Plymouth train leave Plymouth?

A. I am not on the stand as a schedule expert. I can tell you the [illegible] at Rocky Mount—10:35.

Q. What is the distance from Plymouth to Rocky Mount; you don't remember the distance?

A. No; it is in the schedule.

Q. What does that train do from the arrival at Rocky Mount in the morning until it leaves there at 4 in the afternoon?

A. That train left Rocky Mount the night before ran to Plymouth and came back in the morning.

Q. What does this train arriving at Rocky Mount from Plymouth at 10:35 in the morning do between that time and the time when it leaves in the afternoon at 4 o'clock?

A. The train is put on the side-track and cleaned inside and outside and the necessary attention is given to the fires, the coolers are filled with water, etc., the engine goes to the round-house and is given such repairs as it should have after having made a run of that kind.

Q. Then nothing is done except probably clean the cars, look after the fires and the water coolers?

A. That is done to the cars, the engine is sent to the round-house and given the necessary attention, repaired and prepared for the next trip.

233 Q. Is it always broken?

A. I did not say that. My experience is that in order to maintain power properly it must be looked after each trip. I can simply say this that it is not repaired unless something is out of order, but it is necessary to find out whether anything is wrong about it.

Q. That does not do any shifting work?

A. Not that I know of.

Q. Couldn't the engine that pulled that train from Plymouth to Rocky Mount be used for shifting purposes unless there is something wrong about it?

A. I would not consider it good practice.

Q. Could not it be done?

A. I will say no; I would not consider it good practice. The service is not as exacting in the case of the Nashville branch train as it is in the case of the Plymouth branch train.

Q. Isn't it an arbitrary matter that this train is put to shifting at Rocky Mount instead of the Plymouth train?

A. The Nashville branch train is used for shifting at Rocky Mount; it is right at Rocky Mount and is a convenient train and a great many cars that go in are placed at Rocky Mount: that is the most available train for that purpose. The Nashville branch engine and crew go on not at the time of the first trip in the morning, but before that, say 7 o'clock the morning, and they shift up to their leaving time; they shift in between times and they shift after they get back at night, that is not possible with the Plymouth train because it has a lay over of a few hours and the engineman has run long enough for the day's work and we would be taking that engine for a few hours and sandwiching it in for another day's work.

Q. Does the engine stay as long in the day as the engine does that comes there from Plymouth?

A. No; not between trips.

Q. As I understood you you said that the visible cost of handling this train was fifty-one cents per mile; you have arrived at
234 that by itemizing the cost of the crew and the cost of the supplies, etc., and you have estimated it not based upon the actual cost of this Spring Hope train but based on the cost of a new train. Now the conductor you put at $3 per day—what is the conductor paid, what salary does he get per month?

A. I would not like to state with any positiveness.

Q. Don't you know that the salary of that conductor on that Spring Hope train instead of $3 is $2.70 for 12 hours' work?

A. I do not know that it is; I had an impression in my mind that it was $2.90.

Q. Well that is less than $300?

A. Yes, possibly.

Q. And the estimate you have made is not that particular train but a train generally?

A. The rate I gave the conductor is a main line rate, such as we would have to pay for that service.

Q. You estimated the baggage master, porter, the flagman at $4.15?

A. Yes; all of them are at our standard rates baggage master $50, flagman and porter $32.50.

Q. How much of that baggage master does the express company pay?

A. None; 39 carries express.

Q. There is no express carried from Spring Hope to Rocky Mount?

A. I thought you were talking about the new train, I was speaking of a main line train.

Q. Doesn't the baggage master on that train handle express?

A. I can't tell you, I am not a transportation officer.

Q. Isn't that the rule?

A. No, sir; it is not the rule.

Q. When a baggage master on a branch line handles express matter does the express company pay any part of his salary?

A. It pays compensation as they consider he performs for them.

Q. Does the railroad let the express company fix the compensation that they shall pay?

A. Yes, sir.

Q. What do you pay the engineer?

A. $3.25.

Q. What do you pay the engineer on this identical train from Rocky Mount to Spring Hope?

A. I think $3.25; I am not sure; I had hoped to have the schedule here.

235 Q. You have estimated the costs of oil, waste, brasses at $2.50—will you please sub-divide it?

A. That is on what item?

Q. On cars.

A. I got that from my annual performance sheet.

Q. Do you speak of your own knowledge?

A. That information is got from my file, the statistics that we keep, the costs of maintaining, repairing and otherwise handling of equipment I got from reliable sources, the information was compiled under my direction.

Q. You did not speak of it from your personal knowledge?

A. Well that is a very peculiar question.

Q. Do you speak of your own knowledge when you say the cost of oil, waste, brasses and repairs is the cost of $2.52 per day?

A. I know that as well as I know any other fact; I can't tell you exactly how much oil is put in the journal boxes on a particular coach. The engineer who runs that train is not in the same position as I am to get the information. If any of the records are reliable and impart any information my information is just as reliable as any information that can be obtained. The figures that I have given you are taken from last year's compilation, 1903. The figures for this year will be higher; I know it from analogy; I know that certain things will be higher on account of increased costs of materials and wages.

Q. State to the jury how you got that item of $2.52?

A. I will be perfectly frank and say that I did not expect to be called upon to give figures here in fractions of a cent on items of oil and waste.

Q. In answer to Mr. Davis' examination you stated that the cost of oil, waste, brasses and repairs, so far as cars were concerned are $2.52 per day, that is larger than is made by this engineer and by Mr. Lacy, and I ask you to explain to the jury how you get at that figure of $2.52 per day for these expenses?

236 A. That is made up of the cost of repairs, maintaining passenger cars, running repairs or repairs in the main shop, the wood work, repairs, renewals of wheels and the painting and varnishing annually, of the cost of the brasses on the passenger cars, the waste and the lubrication of the cars and every item of expense that goes into the maintenance of the passenger cars on the train.

Q. How much does the oil cost a day on the passenger cars?

A. I can answer your question as to what we pay the engineman on the Nashville branch, $3.90 per day.

Q. For how many hours' work?

A. For his day's work; the day's work includes not only regular services, but all extra services together with required yard work; not only the regular service, but such switching service as may be required.

Q. How much oil do you use on the cars of that train from Rocky Mount to Selma; how much oil is used; how much does it cost?

A. I can't give you those figures from my mind, the item of oil would be a small fraction of a cent.

Q. You can either say you can answer or you cannot answer?

A. I can't tell you how much oil is used on that particular trip. I will explain that I did not arrive at that cost by estimating how much oil was used on this particular train. I took the figures from my annual performance sheet of the whole line, in that sheet we show the cost per mile run for oil, brasses, waste, repairs and the other items which I have mentioned, so much per mile, the average for the whole run. Now I have applied that to this particular train.

Q. It is 42 miles from Rocky Mount to Selma on any passenger train how much oil will be used on that train and in that distance?

A. I would not attempt to guess.

Q. How much waste is used?

A. That would be a guess.

Q. How many brasses and what sort of brasses, what do you mean by brasses?

A. Brasses are the brass journal bearings, it is the power that runs on the journal, it is put into what is called a journal box, the brass is an anti-friction metal and carries the weight of the cars and the axle revolves in the brass.

237 Q. You don't mean to say that this train would require new brasses every trip?

A. I do not; if I did that cost would be very much higher than it was there.

Q. How many brasses in the ordinary running of a train are required—how often are they renewed?

A. You are asking me questions that no man on the face of the earth can answer.

Q. How often upon a regular passenger car?

A. There is no regularity about it.

Q. Any estimate would be largely a guess?

A. And that was the reason that I did not want to do any guessing that I took our performance sheet for the whole year so that I could get down to something that is scientifically correct.

Q. Is the fuel $10.50 per day?

A. Yes, sir.

Q. What does the Atlantic Coast Line give for fuel on the branch line from Spring Hope to Rocky Mount?

(Objection by defendant. Objection sustained. Exception.)

Q. Do you know the cost of wood at Micro?

A. No; I do not keep up with the cost of wood at the various local stations on the line.

Q. You put an item in here of $3 for cleaning three cars at $1 each a day. To whom would that $3 be paid?

A. Part would be paid to the soap manufacturer, part to the brush manufacturer and part to the labor for applying same.

Q. How much would you pay the soap manufacturer?

A. I don't know.
Q. How much to the brush manufacturer?
A. I don't know.
Q. How much to the labor?
A. Very nearly the whole of it.
Q. Isn't it the porter's business to clean the cars?
A. We do not so stipulate that they shall clean the cars; we have coach cleaners at Rocky Mount; we pay various prices for coach cleaners.

238 Q. Well, what do you pay the coach cleaners at Rocky Mount—say you know or you don't know—answer my question?

A. I don't know; I don't keep up with all the wages at the various points. I put that down at $3 because there are 3 cars to clean; if we had 50 cars to clean it would not cost $1 or anything like it. I know of points where we are cleaning cars for less than that, and where there are a few cars it will necessarily cost more than where we have more cars; that $3 is not an absolute an exact figure as the others are, it is an estimate.
Q. Do you pay car cleaners by the car, day or month?
A. We pay them by the day and some by the month, it runs from $1 down to eighty cents.
Q. How many cars can one man clean in a day?
A. I will say that I have not made a close study of car cleaning. I can form a fair idea from my experience in other lines of work. If you will pardon me, I do not think that is a fair question.
Q. You have put down an item here of interest and depreciation on engine of $3.61 per day—will you please tell me how you got that $3.61?
A. The value of the engine is put down at $12,000, the interest at 6 per cent., that is based on the life of an engine at 20 years.
Q. That is the daily interest?
A. No, the yearly.
Q. How much of that $3.61 is depreciation and how much is interest?
A. The interest is $1.97 per day, the depreciation is $1.64 per day.
Q. Upon what basis do you calculate that depreciation?
A. It is based upon the 20-year life of an engine.
Q. You put those engines at $12,000?
A. Yes, sir.
Q. How do you get that; are the engines on the A. C. L. worth $12,000?
A. No; not all of them.
Q. What is the average value of the engines on the A. C. L.?
A. I should have to go into that and make a calculation; I couldn't answer you off-hand.
Q. Do you say you don't know?

239 A. No, sir; I said I can't tell you off hand, because I would have to know the condition and age of the various engines in order to arrive at the estimate of what each engine is worth; I can't approximate it. I would not attempt on the witness stand to make a statement. I am unwilling to make any statement of it whatever.

Q. Then you decline to answer the question as to the present value of the engines owned by the company?

A. I decline to make any statement in answer under oath as to the average value of the engines of the A. C. L. Ry.

Q. Are they worth $100 apiece?

A. I decline to make any answer.

(Counsel shows witness statement.)

Q. It is in evidence from this statement of Mr. Kenly that the average value of the engines belonging to this defendant are $3,100, after giving you that statement to refresh your memory I will ask you your opinion as to the average value?

(Objection by defendant.)

A. I have endeavored to explain that I am unwilling to make any statement as to the value of the engines. Until I have arrived at the figures myself I can't say anything about it.

Q. I understood you to say that the value of the passenger cars were $7,000 per car?

A. Yes, the coaches; that is rather less than a coach would cost to-day—that is, a first-class coach. We did not buy any second-class coaches.

Q. What do I understand you to say as to the value of coaches?

A. We have a standard first-class coach; the last lot that we bought of that particular character cost $7,000. We have been in the market and have made inquiries for duplicates of such cars and find they are higher. In a few words, we attempted to buy second-class coaches like the first-class, but plainer in work, we found that the difference in cost was so slight that there was no financial advantage gained in buying a second-class car.

Q. What is the difference between a first-class and a sec-
240 ond-class passenger car?

A. The age of the car and the interior of the car. I am basing my estimate upon new cars, we have to buy new cars to replace those taken out of the service to put in this special train. I will say that if we were to buy a new second-class car, a new car with interior furnishings such as we would put into use for second-class travel, the difference in the cost of the first-class and second-class cars would be a few hundred dollars. Cars that are used two or three years are not necessarily second-class cars.

Q. How many years does it take to transform a first-class car into a second-class car?

A. I do not consider that the age has a great deal to do with it.

Q. How many years of use does it take to transform a first-class car into a second-class car?

A. Do you mean cars for second-class travel?

Q. I mean a second-class car.

A. I shall not make any statement covering the length of time.

Q. You don't know?

A. I didn't say that. We do not consider a car second-class on account of its age, but because it is devoted to the use of second-class travel.

Q. You stated to the jury that a first-class car became a second-class car. How many years does it take to transform a first-class car into a second-class car?

A. There is no set time, it depends upon the care that has been taken of the car and the service that it has been in and the use and abuse of it.

Q. Do they use first-class or second-class passenger cars on the train from Plymouth to Rocky Mount?

A. I don't know.

Q. What kind of cars did they generally use; you are acquainted with the character of the cars—you have been on the Plymouth train?

A. I think I have.

Q. What is the character of the cars used the last time you were there?

A. It has been a long time—three or four years.

Q. Were they first-class cars?

A. I do not recollect—they were not first-class, main-line 60-foot cars—they were not new cars.

241 Q. What would you say was the market value of the cars operated on the Plymouth road last time you were on it?

A. Don't know.

Q. As much as $3,000?

A. I can't say.

Q. You decline to answer?

A. I don't know; I would not approximate an answer.

Q. Has the Atlantic Coast Line a single A. C. L. passenger car worth more than $2,000?

A. Yes.

Q. What is the lowest value of a car?

A. I don't know.

Q. What is the value of the least valuable first-class passenger car in the ownership of that road now?

A. I don't know.

Q. What is the average value of the first-class passenger cars belonging to the A. C. L.?

A. I don't know.

Q. What is the value of the Spring Hope cars?

A. I don't know.

Q. Have you seen them?

A. No, sir.

Q. What is the value of the second-class passenger cars?

A. I don't know.

Q. What is the average value of the combination cars?

A. I don't know.

Q. What is the value of the engine used on the Spring Hope branch?

A. I don't know just what engines are on there.

Q. What is the value of a wood-burning engine 17 by 24 cylinder with a 5-foot wheel just as that engine stands—the engine that hauls the train from Spring Hope to Rocky Mount?

A. I don't know. If you can tell me something about the condition, run of the engine, its boiler, fire-boxes, etc., and I could make an examination of the engine I could tell you.

Q. To make thirty miles?

A. That is no guide. It might be ten years old and make the run successfully, or it might be twelve years old; it might have a fire-box in bad condition and it might have a new fire-box; so I can't answer.

242 Q. You have given as the cost of running 82 miles $43.01 per day. How much additional would it cost to extend that run from 82 miles to 156?

A. Twice that you say. I should have to take additional time.

Q. Aren't you an expert?

A. I do not consider an expert can answer any question off hand like that. I can say that it would cost very nearly twice as much.

Q. Which items would you increase on that statement to get the additional?

A. We would increase the conductor's salary.

Q. What do you pay him?

A. Three cents per mile.

Q. Do you pay conductors by the mile?

A. No, sir; he is a branch-line man.

Q. How much more would you pay him?

A. Three cents per mile for the additional mileage.

Q. Do you pay conductors who run 156 miles as much as that?

A. We pay on a sliding scale according to the number of miles they run a month.

Q. What do you pay conductors for running 156 miles on the main line?

A. Do you propose to go on through this entire schedule?

Q. Yes.

A. I really don't care on the stand to make any calculations because it is not a good place to make them.

Q. How much do you pay conductors to run from Norfolk to Goldsboro, and what is the distance?

A. We haven't a schedule just exactly that way. That is really a matter which a time-keeper ought to testify to.

Q. What is the *difference* (distance) from Norfolk to Goldsboro?

A. 156 miles.

Q. That train runs twice 156 miles a day?

A. Yes.

Q. What do you pay that conductor?

A. I don't know of my own knowledge; I have an idea the same conductor does not run every day.

Q. Let me ask the plain, simple question: Here is a conductor who runs a train from Norfolk to Goldsboro and back. Do
243 you pay him by the month or by the mile?

A. On a mileage basis—it varies with the number of miles he runs.

Q. What is the scale. Don't you have a contract with him for services?

A. We have a scale of wages.

Q. There is a contract of some sort; he is paid on a sliding scale you say; he is paid so much a mile, according to the miles he covers. What is that contract and what is the sliding scale?

A. They are paid on a sliding scale according to the number of miles they run. If they run more miles they get more money, but the rate is not increased in proportion to the mileage.

Q. How much in dollars and cents?

A. A man that runs 6,500 miles a month gets 116 dollars a month.

Q. Suppose he don't cover 6,500 miles, what does he get according to the sliding scale? I want to know the rate.

A. 6,400 miles gets $114.

Q. Well, 6,300?

A. $113.

Q. 6,200?

A. $112.

Q. 6,100?

A. $111.

Q. $5,000?

A. He would get $102.

Q. How is that calculated?

A. The conductor puts in a time slip with every mile that is computed at the end of the month.

Q. Suppose he runs 4,600 miles?

A. He gets $99.

Q. Suppose he runs 4,000 miles?

A. $92.

Q. Now, taking a conductor that runs 4,600.80, what would be the additional salary that he would get if he extended his run, getting $3 per day on the branch line, and extended his run on the main line. If he runs 4,600 wouldn't his salary only be increased $9 per day?

A. He would get $99 per month, say, thirty cents per day, $3.30.

Q. You have testified to increase that run from 82 to 156 miles would increase the cost nearly 100 per cent. Now, take the bas-

gageman, flagman and porter, $4.15. How much would that
244 cost be increased if the run was extended from 82 to 156 miles?

A. I don't know where you are going to extend the run to.

Q. You have testified that the cost of running this 82 miles a day is for the baggage master, porter and flagman, $4.15. If that run extended from 82 miles to 156, how much would the additional expense be on account of those three men?

A. I think that is probably a question that ought to go to some other department, I am here as an expert on mechanical matters and not on wages and transportation matters.

Q. You have testified that the additional cost of extending this run would be nearly double; well, I assumed you were not guessing at it.

—. ——.

Q. In this statement you have not testified to anything from your personal knowledge?

—. No.

Q. It is all based upon estimates from the records?

A. I can't testify from my personal knowledge, I can only testify to what I believe to be a fact.

Redirect by Mr. DAVIS:

Q. Those engines owned by the A. C. L., what States are they in?

A. Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida.

Q. Do you personally know the conditions of all of those engines?

A. No, sir.

Q. Is it possible for you to give the value of each of them?

A. No, sir; except such as have been recently purchased. I can tell the value of a new engine, but not of an old engine, unless I examined it.

Q. They asked you about the engine on the Spring Hope branch. Have you ever seen that engine?

A. I have probably seen it some time, but I don't know its condition. I don't know what engine is on every day. I couldn't tell.

Q. In regard to the cars on the Spring Hope and the Plymouth branches. Have you any idea of the value of the cars on those branches?

A. No, sir; I have not.

245 Q. In regard to the estimate which you made, Mr. Busbee asked you what would be the additional cost, and I understood you to tell him that you couldn't give that additional cost unless you sat down and figured out each of the items?

A. I said in a general way I thought it would be almost twice the estimate.

Q. Now, this estimate that they have been examining you about. You prepared that estimate by request?

A. Yes, sir.

Q. What study did you devote to that—did you give any care and consideration, or was it a hasty examination?

A. I went into the matter very carefully, because I realized that to get at a cost of this kind was an exceedingly difficult matter, and I went over our records for several years back and based these figures on our last year's performance sheet, which is an itemized statement of all the costs of operation of trains. I spent a good deal of time on it and went into it very conservatively, as I thought.

Q. Have you placed those figures at the full value or how?

A. I have placed them very conservatively, I think. There has been some difference of opinion as to what is the life of an engine; some people of experience state fifteen years.

Q. Were you in the court-house yesterday?

A. I was.

Q. Your estimate of the value is twenty years?

A. Yes.

Q. Some people say it is fifteen?

A. Yes.

Q. That valuation puts the actual visible costs and expenses at fifty-one cents, but in your opinion, when you consider the other costs that it would amount to about seventy-five cents?

A. Yes, that is an estimate and based upon observation, experience and judgment.

Q. If under the rules of the contract between the company and engineman when you run a branch line man on the main line don't you pay him main line wages?

A. Yes, he becomes a main line engineman.

Q. When he makes a run partly on a branch line and
246 partly on the main line he is considered a main line engineman?

A. Yes.

Q. When a train got to Selma and had to go to Smithfield to turn around wouldn't that proportionately increase the expense?

A. Yes.

Mr. H. M. EMERSON, witness for defendant, being duly sworn, testified as follows:

Q. You are with the Atlantic Coast Line?

A. Yes, sir.

Q. What is your position?

A. Traffic manager.

Q. How long have you been a railroad man?

A. Twenty-six years.

Q. You were with the Coast Line all those years?

A. Yes.

Q. I will ask you what is the difference between the rate from Plymouth to Raleigh via Selma over your line and the rate to Raleigh via Weldon?

A. The rate from Plymouth to Raleigh via Selma is $4.50; from Plymouth to Raleigh via Weldon is $4.50. The rates are the same.

Q. What is the rate from Washington to Raleigh via Weldon?

A. $4.30.

Q. It was stated by some of the witnesses that tickets couldn't be obtained for sale at those offices from there to Raleigh. Do you know anything about any of that?

A. I do not know. I am quoting those figures from a rate sheet dated September 1, 1903, and at present in effect. The figures are quoted by both routes as the figures named by me, and if tickets are not in the hands of the agent it is through error of the agent in not calling for supplies.

Q. Has your attention ever been called to the fact that these tickets were not on sale?

A. It has not.

Q. What would be done if so?

A. If the agent was out he would be furnished with tickets at once.

Q. How about Tarboro?

A. The rate from Tarboro to Raleigh via Selma is $2.75. There is no rate quoted via Weldon in the sheet.

Q. I will ask you whether or not the rate would be made
247 by the Coast Line from Tarboro and whether the Coast Line tickets from those points would not be put on sale?

A. Yes, sir.

Q. If it was requested it would be done?

A. Yes, sir.

Q. If a man holding one of your tickets from Plymouth or Washington via Weldon for Raleigh, could he check his trunk through on that ticket from Plymouth to Raleigh?

A. Yes, sir.

Q. How are those rates fixed in competing points?

A. Well, they have to be governed by circumstances. In this case we have made the rates the same via Weldon, although the mileage is longer, for the accommodation of the people in eastern Carolina who desire to use the Weldon route, the mileage by Weldon is so much greater than via Selma that we can't give the short line rates. Where we can do so without disturbing intermediate rates we do.

Q. You are forbidden to do that?

A. Yes.

Q. Nos. 208 and 212 are what, Mr. Emerson?

A. Are fast freight trains operated for the movement of vegetable freight for the East. The schedules are arranged with a view of accommodating perishable traffic.

Q. What portions of North Carolina do those two trains serve?

A. The entire section between Contentnea and South Carolina line, including the branch lines coming in at Fayetteville and at Ellrod.

Q. What country does the branch line going in at Ellrod serve?

A. The Chadbourn section.

Q. Is there any considerable amount of truck from that section?

A. The movement is very heavy. The report for May shows the movement of 390,000 quarts from Chadbourn alone.

Q. How many cars?

A. Forty-odd cars.

Q. Have you any idea of the value of that?

A. At the lowest estimate this time of the year our growers receive from 18 to 68 cents per quart. In the East it depends on the condition in the market and the condition of the berries on
248 reaching the market. Making even a lower estimate than the figures named and basing it upon the lower per quart price of the season of ten and twelve cents, makes the cargo of that train worth $40,000 round figures.

Q. What chief consideration governs the schedule of those trains?

A. The first consideration is the arriving time at New York.

Q. At what time does the market open in New York for the sale?

A. One o'clock at night. The trains must arrive on the Jersey City side in time to give sufficient time to float the cars along the New York pier. They are then unloaded until 12 o'clock, when the pier is open for the teams to haul the truck from the pier. After the teams are turned in on the pier it is impossible to continue unloading and all the truck left in the cars at 12 o'clock must remain over to be put on the market the next morning. That means a delay of twenty-four hours.

Q. Does that mean 12 o'clock sharp?

A. Yes, it is controlled absolutely by the market, and could not be changed by the transportation lines if so desired.

Q. That is the controlling consideration in fixing the schedules of your fast truck trains?

A. Yes.

Q. Then what is the next consideration?

A. That time being fixed for us by the market conditions.

Q. About what time does that train usually arrive in Jersey City?

A. Between 6 and 8 o'clock. If it arrives after 8 it misses the market. The arriving hour being fixed by the market requirements, our effort is to fix the leaving time from the fields so as to enable the grower to market as much as he can, or as is ready for market on that day. He can't pick his truck at night, but he must commence picking in the morning, and the longer we give him in the field the more he can market per day.

Court adjourned until next morning.

249 APRIL 28TH.

Examination of Mr. EMERSON continued.

(Examination by Mr. DAVIS:)

Q. You testified on yesterday that the rates from Washington and Plymouth to Raleigh via Weldon and Selma were the same. Now, how about the rate from Greenville to Raleigh via Weldon and Selma?

A. The rate from Greenville to Raleigh via Selma is $3.95 and via Weldon $3.95.

Q. Are tickets sold by the Atlantic Coast Line from Greenville to Raleigh via both routes?

A. Yes.

Q. They are for sale in those offices?

A. Yes, sir.

Q. It was testified on yesterday that a ticket could not be bought to those places. What action did you take in the matter?

A. When the matter was brought to our attention we telegraphed the passenger agent at Plymouth—I think that was the point where tickets could not be bought via Weldon. We asked him why tickets were not on sale.

Q. Have orders been given for their sale?

A. Tickets are on sale at those points. If the agent has permitted his tickets to run out he has violated his instructions from the traffic department.

Q. Have you that statement that was introduced in evidence on yesterday giving the number of passengers routed over the Atlantic Coast Line to points on the Southern from March 20th to April 20, 1904?

A. Yes, I have the statement.

Q. That gives the total number of passengers during that time that passed over the Coast Line by Weldon and Goldsboro?

A. Yes, if every one of those passengers had been transported by this additional train which this order desires us to make.

Q. What would have been the daily income derived by the Coast Line from those passengers—both those by Weldon and Goldsboro as well as those by Selma?

A. If all the passengers named on the statement referred to as having been transported by Goldsboro, Selma and Weldon to Raleigh and Southern railway points from March 20th to April
250 20th, inclusive, if they had been transported on this new train, the earnings of that new train between Rocky Mount and Selma would have amounted to $13.68 per day.

Q. If that train had not carried the passengers who were routed by Weldon, but only carried the passengers who were routed by way of Selma and Goldsboro, what would have been the daily revenue?

A. $11.26 per day.

Q. In making that calculation, what average did you allow for first-class passengers and what for second-class passengers, and upon what did you base that allowance?

A. I used 60 per cent. for the first-class and 40 per cent. for the second-class. I arrived at those figures from several years' experience in handling the passenger traffic of the line.

Q. How long have you been in the passenger traffic business?

A. About fifteen years, sir, I should say.

Q. From what source could the company expect any added revenue or any addition to its revenue from that new train if put on?

A. I know of no additional source of revenue from that train, sir.

Q. Please explain.

A. In handling passenger traffic with the view of developing new business there are certain factors that will assist. In the absence of said factors the results are not in any way satisfactory, so far as increased business is concerned. In the first place, there is a commercial movement.

Q. You mean freight?

A. No; passengers. There is a movement of merchants to the markets from eastern Carolina points to Richmond and Norfolk. There is always an opportunity to develop that movement, inducing the merchants to go to the markets frequently. There is a very small movement to the central and western part of the State, confined, I might say, to a few apples and onions to western North Carolina. That does not require the presence of the purchaser in the market, as it would if the business was merchandise, like dry goods, boots and shoes. There is another factor, and that is
251 the attractions in the way of resorts. Resort points assist you in increasing the passenger business. North Carolina resorts are, so far as eastern Carolina people are concerned, simply resorts, and, therefore, that movement would naturally be only during the summer months. In fact, we cater to the mountain resorts of North Carolina only during the summer months by sale of round-trip tickets, etc. At that time there are a great many hotels and boarding-houses open and advertising matter put out to build up the movement to that section. There are no resort points, however, east of Greensboro, and the day train from the eastern Carolina section—a train of that kind making this proposed Selma connection—I don't think would be satisfactory for the upper Carolina resort points. Having in mind the new train which is referred to in the order, we would leave eastern Carolina points on the Coast Line in the morning, arriving at Asheville about 1:30 at night. I take the time at Asheville, because it is not a difficult matter to take that time and drop along to Hickory and see what time we would arrive at other mountain points. The arriving time would be in the middle of the night. With our present afternoon schedule we can arrive at the mountain resorts in the middle of the day, giving passengers time to locate in the towns or go to their country places. Therefore, you could not use

successfully a connection like this. It would only leave the school business and the movement to conventions, etc. The movement to conventions, as a general proposition, is confined to delegates. Looking at the question from a traffic standpoint I would say that it was a hopeless case to increase our revenue by the operation of that train.

Q. With regard to that train returning from Selma to Rocky Mount, what prospect would there be of any revenue upon that return trip?

A. As there are two trains ahead of it making the same connection, I can not imagine how it would be possible to hold people back. It would return dead, so far as Southern railway passengers are concerned.

252 Q. Are there any fast passenger night trains passing over the Atlantic Coast Line to Selma?

A. Yes; one in each direction.

Cross-examination by Mr. ARGO:

Q. You say you are traffic manager?

A. Yes, sir.

Q. What are your general duties as that?

A. General supervision of traffic, both freight and passenger.

Q. General manager of the whole system?

A. Yes.

Q. And have been in that position for about fifteen years?

A. Been connected with the traffic department in charge of the passenger traffic as chief clerk and assistant passenger agent.

Q. How long have you been traffic manager of the system?

A. For something over a year. Before that I assisted the traffic manager.

Q. Now, Mr. Emerson, as I understand you, you said that from the lower points of your system to Southern Railway points you sold no through tickets via Weldon going west or via Goldsboro or Kinston.

A. No, sir; I do not recall that question or that answer, because we do sell tickets from the eastern Carolina points to a number of Southern Railway points via Selma and via Goldsboro.

Q. How about Weldon?

A. We sell none to Southern Railway local stations.

Q. You sell to Raleigh via Weldon?

A. Yes.

Q. From what points east do you not (sell)?

A. That covers our coupon points.

Q. Do you sell any round-trip tickets from Tarboro and from the west except by Selma?

A. We have no round trip tickets on sale now.

Q. Do you sell through tickets via Weldon from Tarboro?

A. No.

Q. Do you sell through tickets via Selma?

A. Yes, sir.

Q. From what other points east do you not sell through
253 tickets via Weldon?

A. I do not clearly understand what you mean when you refer to "other points."

Q. East of Rocky Mount.

A. We do not sell tickets from the smaller stations at any time. Those offices are not properly equipped for the handling of through tickets.

Q. I want to know if there is any other point east of Rocky Mount where you do not sell a ticket via Weldon.

A. There are a number of smaller stations at which we do not sell through tickets to Raleigh either via Selma, Goldsboro or Weldon.

Q. Your statement or record, then, does not show the number of passengers buying tickets who came to Raleigh?

A. I did not prepare the statement of the number of passengers, sir. I took the record as given to me. I would state that the passengers from eastern Carolina going via Selma coming from points at which tickets for Raleigh were not on sale, would naturally buy to Rocky Mount, rebuy and be shown as Rocky Mount passengers, when they came from eastern Carolina. I can not tell how these figures were prepared.

Q. Then you are not prepared to certify that that record embodies every passenger that passed through from March 20th to April 20th?

A. I can not swear to it; no, I can not.

Q. The statement which you refer to and upon which you base your estimate, includes only passengers who were sold tickets at certain specified points east of Rocky Mount?

A. No, sir.

Q. Do you understand that statement to include all the tickets that were sold at points east of Rocky Mount from March 20 to April 20?

A. The statement includes all passengers which were delivered to Selma and Goldsboro during the dates named and also all the passengers to the Seaboard Air Line during the time. I am not prepared to swear to it.

Q. It includes all the passengers delivered at those points on the Southern?

A. Yes, sir.

Q. You say there are a number of points east of Rocky
254 Mount from which you do not sell tickets to Raleigh?

A. Not necessarily, as I answered before.

Q. What is the proportion of travel from points east of Rocky Mount over the Weldon line—that is to say, via Weldon to Raleigh, via Selma to Raleigh, what is the proportion?

A. I would have to use the figures on the statement, not having the information.

Q. What is the proportion of travel o er these three lines?

A. That is a matter of record. I ca not tell how many passengers have moved this week without reference to the records.

Q. How about the combined movement from Goldsboro and Selma with that of Weldon?

A. I should say from 75 to 80 per cent. via Goldsboro and Selma as against the remainder via Weldon.

Q. If you had a reasonably certain connection at Selma to reach Raleigh, would not almost all that portion go over on the new train, if established?

A. No, sir.

Q. Why?

A. Because of our night connections which the new train would not accommodate. There is a train leaving Goldsboro at 9:41 p. m. which arrives at Greensboro in the morning at six, makes the western resort points before the middle of the day. In addition to that, we have our morning connection.

Q. Is that night train a freight?

A. It has two passenger coaches and at one time carried a sleeper, but the folks kicked at Raleigh. I would say that it carried freight cars on a passenger train.

Q. Don't you know that that is the only freight train that leaves Goldsboro at night?

A. I think I am prepared to say it is the only train carrying freight cars going west.

Q. What is the distance from Goldsboro to Greensboro?

A. 130 miles.

Q. Do you call that an accommodation train?

A. I don't know as I do.

255 Q. An accommodation train means a passenger attached to a freight?

A. Yes.

Q. It is a little extra trimming to a freight?

—. No, sir; an accommodation is a freight carrying passengers.

Q. A passenger leaving Goldsboro at 9:40 would arrive at Raleigh at what time?

A. 11:45.

Q. So that one leaving Goldsboro at 9:40 would be up all night to get to Raleigh?

A. He would be up until 11:45.

Q. What time would you get to Greensboro?

A. Six in the morning. You could remain in the car till seven.

Q. What would be the increased cost of fare by taking the sleeper from Raleigh to Greensboro?

A. I am quoting now from memory. I should say $1.50.

Q. So that in addition to the regular cost of the ticket you have to pay $1.50 additional?

A. Unless it is a man and his wife. Very often they take a lower berth. If a man has any distance to go in the country he generally stays in town and drives out in the morning.

Q. Do you always stop at Hickory?

A. No, sir.

Q. What time would you get to Hickory?

—. I should say the time was in the neighborhood of 10 o'clock.

Q. You get to Greensboro at six in the afternoon and to Salisbury at 8:30?

A. Yes.

Q. If a man goes to Asheville he gets there at 1:30 at night?

A. Yes.

Q. Would a person going over that road have a sleeper from Greensboro?

A. No.

Q. If a person wanted a few hours' sleep, he could get it at Salisbury?

A. Yes, by paying for it.

Q. I ask you as a matter of conclusion if the bulk of travel—if connection were had at Selma—would not be on the new train?

A. I answer that by saying that there would be no benefit as to the night connection from North Carolina resorts.

Q. How long are the resorts open?

A. Generally till the last of October.

256 Q. How about the balance of the year?

A. No commercial business. Train would bring a few delegates and school children.

Q. It has been testified that for the twelve months of 1902 at different points east of Rocky Mount tickets to the number of 174,323. The different points were specified.

Q. What proportion of those were coupon tickets?

A. I am not prepared to say.

Q. What proportion of those came west of Selma and what proportion south and what north?

A. I am not prepared to answer.

Q. What proportion of those people came over the Southern?

A. I should say possibly 5 per cent. I should say that was a liberal estimate of the Southern Railway passengers.

Q. Where would the other 95 per cent. go?

—. A large number of them use short trip tickets at 10, 15, or possibly 30 miles.

Q. You say 5 per cent. is an exceedingly liberal estimate? That would be 8,615 people.

A. I would like to correct my estimate.

Q. Correct the general movement, too?

A. No. I made no calculation at all. When you asked me as to what per cent. I took the whole as represented by 100 per cent. and possibly 5 per cent. move in this direction and 95 per cent. in the other.

Q. If 5 per cent. of those people, or 8,616, came over the Southern line on those tickets what amount of revenue would your company receive?

A. It would be necessary for you to give me a point at which they took our train. It would be a difficult matter to give you the revenue that might accrue to our line on the movement of 8,000 passengers from eastern Carolina points to Southern Railway resorts by way of Selma without knowing where they took our train. The rate from Kenly is 25 cents, something over seven miles. In that statement the movement via Selma—well, I guess 50 per cent.
257 originates at Wilson, from which point the rate is 90 cents to Selma.

Q. You would get the local travel?

A. Yes, sir.

Q. What would be the fare from Wilson to Selma?

A. Now, I am quoting without the tariff before me—90 cents from Wilson; 75 cents second-class. That is Wilson to Selma.

Q. Elm City to Selma?

A. $1.10 and 95 cents; Rocky Mount, $1.35 and $1.15.

Q. Spring Hope?

A. I have to stop this without the tariff.

Q. How far is Spring Hope from Selma?

A. Nineteen miles, I think. I was quoting from memory. It is a difficult matter on the stand to figure passenger fares on the mileage.

(Witness says he will put in tariff from points in question.)

A. Spring Hope would be $2.00 and $1.65.

Q. Nashville?

A. $1.70 and $1.45.

Q. Tarboro?

A. I can't say without tariff.

Q. It is shown that 164,314 local tickets were sold up to February, 1904, from stations mentioned along there. What would the revenue amount to?

A. This does not show there were that many sold. (Refers to sheet.)

Q. What from small local tickets?

A. $123,050.06 from local tickets as covered by this statement.

Q. What was the gross income derived from the sale of tickest to the 174,683 passengers appearing upon the statement exhibited?

(Objection by defendant. Objection sustained. Plaintiff overruled.)

Q. How many miles of road does your entire system cover?

A. In the neighborhood of 4,000.

Q. How many miles in North Carolina?

A. Can't answer that off hand. Reports will show that. I do not find it in this report.

Q. What are the net earnings of your system in North Carolina from freights?

258 A. I do not know. I could not express an opinion.

Q. You are the traffic manager?

A. Yes.

Q. Do you know what the net earnings from passenger traffic (are)?

A. Not without records.

Q. Do you know what the net earnings of your entire system is from freights?

A. Not without reference to records.

Afternoon session began 2:30 p. m., April 28th.

Mr. H. M. EMERSON.

Cross-examination by Colonel ARGO resumed:

Q. Do you know whether in the year 1903 your company realized enough from its operations to pay all the operating expenses and the fixed charges and declared a dividend in favor of the stockholders?

A. Of my own knowledge I could not say; I am not a stockholder.

Q. Do you know from the records of the company whether that is so?

(Objection by defendant.)

Q. I will ask you whether a reasonable certain connection at Selma with trains on the Southern railway would not be a great convenience and benefit to the people living north and east of Rocky Mount?

A. Well, I would like to qualify my answer. It would, no doubt, accommodate some people, but as to the connection being necessary to take care of the travel between eastern North Carolina and the Southern Railway points I should say not.

Q. Wouldn't it be very convenient to the people and necessary?

A. It would I would say.

Mr. DAVIS:

Q. You say that in answer to the question of counsel it would be convenient to the people of the east to have another train. Was that your answer?

A. In this way, if I should go on the street to take a street car and have to wait ten minutes while the ten-minute car might accommodate the travel it would be more convenient for me to pick up the car in front of the house at that time. In that way it would

259 be a convenience, but it would not be necessary. We give to the eastern Carolina people the accommodation that we felt the travel deserves.

Q. It would be a convenience to run a train every five minutes apart in that sense of the word?
A. Yes, sir.

Mr. W. MONCURE, witness for defendant.

Direct by Mr. POU:

Q. Have you had any experience in any department of railroad transportation?
A. Yes, I was division superintendent on the S. A. L., for fifteen years.
Q. How long have you served in the various capacities of railroad business?
A. Thirty years.
Q. Where is your home?
A. Raleigh.
Q. Are you now engaged in railroad business?
A. I am a civil engineer.
Q. Could you give us an approximate estimate of what in your opinion would be the cost of running a train on the main line of the Coast Line from Rocky Mount, 42 miles south to Selma and back again between the hours of 3 o'clock p. m. The car is to be main line equipment—3-car train, first-class, second-class and baggage. Could you give us an estimate of what the cost of that train would be, not counting the bonded debt, interest charges, trackage, etc.?
A. It would cost the same as it would be 100 miles; probably from thirty-five to forty cents per mile.
Q. It would be from $35 to $40 per day?
A. Yes, sir.
Q. Did you say the cost would be the same as 100 miles?
A. Yes, sir.

Colonel ARGO:

Q. Do you mean it would be from .35 to .40 per mile?
A. Yes; you couldn't employ those men for less than a day and you would have to pay them.

Mr. POU:

Q. In your opinion, if that new train was to run half hour in front of another local train going in the same direction and stopping at the same points and leave half hour or three-quarters behind
260 of another local train going in the same direction and stopping at every stop and the track already having five to six passenger trains a day, would this train materially increase the revenue to the company?
A. I do not see how it could do it and accommodate the business.
Q. Have you heard the schedule between Rocky Mount and Selma and back described during this trial?
A. I have seen the diagram which shows the schedule.

Q. In your opinion would it be practicable to put this new train on and have it make the connection ordered?

A. From that diagram it seems that that train would meet other trains between stations and that the whole arrangement of the schedule would have to be altered.

Q. Would it be practicable to put it through at Selma at 3:45?

A. It would not, it would require the rearrangement of the whole thing.

Q. Under the conditions as they exist can you put that train through on schedule time?

A. According to that diagram the train would have to stop at stations and could not be put through on time. (Diagram is shown witness.)

Q. According to that diagram and schedule do you think the new train could be run between stations on the schedule the commission orders?

A. According to that diagram that train would meet these other trains between stations and it would require a rearrangement of the schedule.

(Diagram of schedule offered in evidence by defendant, marked Exhibit "O," and hereto attached.)

Cross-examined by Mr. WOODWARD:

Q. You say it would cost as much to run a train 82 miles as it would cost to run 100 miles?

A. Yes; because the men are always paid 100 miles.

Q. To run a train 156 miles a day what would the engineer receive?

A. I had to go to the corporation commission report to get the pay of these men.

Q. What would the cost of the necessary crew to make that run be?

261 A. From the report of the commission it would be $11.60 and according to the Interstate $15.25.

Q. The North Carolina Commission report is the cost of operating trains of that character in North Carolina?

A. Yes; that is the report of the A. C. L. for 1902.

Q. That is the crew?

A. Yes.

Q. How much wood would it take to run 156 miles?

A. It would take four tons of coal on that run. I think it would take at least four for 100 miles.

Q. What would it be for 156 miles?

A. Between five and six tons.

Q. What does coal cost the railroad company?

A. I don't know exactly—$3 per ton.

Q. Does it cost that much?

A. I think so.

Q. It would take between five and six tons of coal?
A. Yes.
Q. Say five and a half?
A. At least that—the outside figure would be six tons.
Q. That is $18. Now, how much would it take if it was a wood-burner?
A. Wood is estimated two cords to a ton.
Q. Doesn't a cord of wood run 25 miles?
A. No, sir.
Q. How much oil would it take?
A. The usual estimate is about $1.00 for 100 miles.
Q. That would be $1.50 worth of oil?
A. Yes.
Q. What other expense would there be in running 156 miles?
A. Take the water; that would cost probably $1.00 for 100 miles—$1.50 for 156 miles.
Q. What else would there be?
A. The cost of the engine and interest on the investment.
Q. Do you know what the engines of the A. C. L. cost—the engines they use?
A. No, sir; I am figuring about the engines we used to use on the Seaboard.
Q. What have you figured on that?
A. I think the life of that engine will probably be fifteen years.
Q. What have you figured that at?
A. $2.19 per day; the interest on that investment is $1.97.
262 Q. That is upon a basis of $12,000?
A. Yes, sir.
Q. Now, if your engines were worth $3,000 it would be proportionately less?
A. Yes.
Q. If it was worth $3,000 it would be only three-fourths on the depreciation?
A. Yes, sir.
Q. And the interest would be one-fourth less?
A. Yes, sir.
Q. What other items?
A. Three coaches, 8,000 apiece, and the baggage car $5—. I think the life of those coaches would be twenty years, and I figure the depreciation $2.88 and the interest $3.45.
Q. That is upon the basis of those coaches being worth what?
A. $8,000 for the two and $5,000 for the baggage car.
Q. This is upon the basis of the passenger cars being worth $21,000.
A. Yes, all three.
Q. Any other items?
A. No, sir; I believe that is all. That figures up $35.84. This is for 100 miles.
Q. Say the items are the crew, $11.60 and the coal $18?

A. The cost of the crew is more than that, for this $11.60 is for 100 miles. It would increase in proportion of 100 to 156.

Q. That would only be as to the engineer and the conductor?

A. I don't know the Coast Line rules on that. Whatever their rules are as to that would be added to the $11.60.

Q. It has been testified that the wages of the conductor to run 156 miles would only be increased thirty cents a day and that the engineer's wages would be increased three-fourths. That would be added to your estimate?

A. Yes, sir.

Q. Six tons is an extreme estimate of coal?

A. Yes, sir.

Q. That is the cost of running that train 156 miles?

A. Yes.

Q. Counsel asked you about whether this train, if imme-
263 diately preceding another passenger train by thirty minutes and following another passenger train thirty minutes, whether it would increase the revenue; you say you think it would not?

A. Provided the first train wasn't over crowded.

Q. If, as a matter of fact, this train would, in the majority of the days precede another through train from one to three hours wouldn't that train be of service and produce some revenue?

A. It might possibly do so.

Q. Wouldn't it reasonably do so?

A. If there are several hours difference it might possibly do it.

Q. And coming from Selma if the same conditions existed, if it preceded another train from one to four hours from Selma to Rocky Mount?

A. I don't know, sir.

Q. They have asked you about the possibility or practicability of this train running from Rocky Mount to Selma according to some map they have introduced. Now, it is 42 miles from Rocky Mount to Selma. Within what time could a train with two passenger coaches, a baggage coach and an engine make 42 miles with the usual stopping to put on and off local passengers, with stations the usual distances. Couldn't that be done safely in an hour and twenty minutes?

A. That would be a right fast schedule.

Q. If the regular schedule of the A. C. L.'s through train, No. 39, is scheduled to leave Rocky Mount at 1:30 and reach Selma at 2:50, composed of eight or ten coaches, one or two sleepers and two express cars doing local business at all the stations, and express business at all the stations—if that train can make that schedule from Rocky Mount to Selma in about an hour and twenty minutes, couldn't this light train with only two passenger coaches, baggage coach and engine make it more easily?

A. Yes, sir.

Q. Couldn't that be easier done?

A. It ought to be easier done with a lighter train than a heavier.

Q. Are you familiar with the track from Rocky Mount to Selma?
A. No, sir.
Q. Assuming it is a straight track, the road-bed in fine con-
264 dition and heavy rails, couldn't that train make the schedule from Rocky Mount to Selma, having only two superior trains to pass on the way, assuming those superior trains to be on time?
A. It depends entirely upon the schedule of those two trains.
Q. I am assuming that the trains would be on time. Going north the stations on that road are four and five miles apart. Now, if that train leaving Rocky Mount between 12:50 and 1, having only those two superior trains to pass, if those superior trains are on time, couldn't that run be made from Rocky Mount, leaving Rocky Mount at 12:50 and reaching Selma at 2:25?
A. I don't know. It may be possible, but it would be a difficult schedule to make.
Q. How long would it take this train to pass a superior train, if superior train is on time and due at the meeting point before this train?
A. If the schedule was made so as to meet at those stations it would only take four or five minutes to pass.
Q. It would only take four or five minutes in passing those two superior trains?
A. Yes, if the trains were on time.
Q. You say that with that lighter train of one engine, two coaches and a baggage coach it would be easier to make that schedule in an hour and twenty minutes than to keep ahead with ten cars, two express cars and sleepers doing the local express business?
A. Yes, the lighter train would be the easier to make that schedule in an hour and twenty minutes than to keep ahead with ten cars, two express cars and sleepers doing the local express business?
A. Yes, the lighter train would be the easier to make the schedule with.
Q. You have never been over that part of the road?
A. Yes; travelling in a passenger coach.

Re-direct by Mr. Pou:

Q. Mr. Woodward has put some questions to you as to the cost of running 156 miles—running between Rocky Mount and
265 Selma and back. Let me understand what your estimate of the cost would be of running from Rocky Mount to Selma and back 84 miles of track?
A. The figures which I have by referring to the North Carolina report are $35.84.
Q. Does that estimate include any cost of cleaning the engines and and cars at terminals—visible services?
A. No, sir.
Q. Does it include any of the necessary repairs at terminals?
A. No, sir.

Q. You have confined yourself to the running costs?
A. Yes, sir.
Q. When a track is already crowded or occupied by a considerable number of trains what is the effect of putting another extra train on the track with regard to the ability of that extra train to make time?
A. It is harder for the extra train—each additional train makes it much more difficult to operate the others.
Q. If the track is in good condition and there is only one train on it that train can make the highest possible speed?
A. Yes, sir.
Q. And each additional train you put on tends to lessen it, as you crowd the track?
A. Yes, sir.

Mr. BUSBEE:

Q. In regard to the use of this train and the probable increase of travel suppose the trains that furnished service to the public by the A. C. L. for Selma left at an early hour and the other train kept him up until 11 o'clock at night and by reason of this condition a large portion of travel was sent around by Weldon?
A. The increase of facilities have a tendency to increase the travel.

Mr. D. K. WRIGHT, witness for defendant.

Direct by Mr. JONES:

Q. Where do you live?
A. Raleigh. I am an engineer on the S. A. L. for eighteen years.
Q. What was your business before you became an engineer?
A. I was a fireman.
266 Q. Have you had a fair opportunity to acquaint yourself with all the conditions of a locomotive engine?
A. Yes.
Q. And the cost of running an engine?
A. Yes, sir.
Q. From Rocky Mount to Selma is said to be 42 miles, will you state what would be the cost of running an engine and train of baggage car and two passenger cars between 12:55 and 1 in the day between those two points?
A. I have made an estimate of what it would cost, exclusive of the cars. I do not consider my information of the cars would justify me to give information on the cars, for the labor and the fuel and such other necessary — will be $38.31.
Q. State whether that includes the charge of repairing at terminals?
A. That includes what we call running repairs.
Q. That doesn't include interest on the investment?
A. No, sir.

Q. Does it include any allowance for trackage?

A. No, sir, it only includes $2.20 per day depreciation on the wear of the engine in addition to the supplies and material which would be necessary to keep up running repairs—I mean any little incidentals which might occur on the trip.

Q. Is that included in this estimate?

A. Yes, sir.

Q. That is from the track up?

A. Yes, sir.

Q. Not including the baggage car and passenger cars?

A. No, sir.

Q. Have you heard this schedule spoken of and discussed here between Selma and Rocky Mount; have you examined it?

A. I have seen a sketch made on paper with pencil.

(Witness is shown schedule.)

Q. You will notice that this train leaves at 12:55 or 1 o'clock, the extra train that we are talking about, and arrives at Selma at what time?

A. 2:25.

Q. State what trains it has to encounter and where at?

A. It meets 48 at Elm City and it meets 40 and 212 at Kenly.

Q. 48 is from Goldsboro, isn't it?

A. Yes, sir.

Q. And 40 is to Selma?

A. Yes, sir.

267 Q. Suppose 212 is running on time from 1 to 5 section, what time would it take to make this run taking into consideration the schedule of all the trains used?

A. An hour and 25 minutes, but it is not practicable.

Q. What time will it take that extra to get there? *A.* There are ten stops on the schedule; do you propose to make all those local stops?

A. Yes. *A.* Yes, you can't stop and start in less than three minutes; you have to take a side track twice, that is 10 minutes and 8 stops, 3 minutes, makes 34 minutes.

Q. This train 212 is scheduled to arrive at a certain time at Rocky Mount?

A. Yes.

Q. And it is running on that time?

A. Before you go any further you have got to change all those others to get this schedule in; you can't meet that train between stations.

Q. How many places will it run there between stations?

A. Three places.

Q. Suppose that has the right of way, how could that extra train work its way to Selma without disarranging the entire schedule?

A. It couldn't do it.

Q. You would have to make an entirely new schedule?

A. Yes.

Q. In the event that that schedule was arranged so as to not meet between stations there would be a delay.

A. It would materially delay these other trains; they would have to delay the special train, or the other trains, if you held the special train to advance the others you would delay that.

Cross-examined by Mr. WOODWARD:

Q. What is your run?

A. Between Raleigh and Columbia, S. C.

Q. How many miles is that?

A. 204.

Q. Do you make it every day?

A. Very near; we run every day in the busy season; we have five men on four runs.

Q. You have made that run every day for a long time?

A. Yes.

268 Q. What is your schedule?

A. 31 or two miles an hour including stops; we do local work at certain stations; we have express cars, heavy train and we have anywhere from 5 to 12 cars and express cars.

Q. Do you meet any trains between here and Columbia?

A. Yes, I meet two going south.

Q. I am asking you going from here to Columbia how many do you meet?

A. Two trains that I have to look out for.

Q. You make that run upon a sche-ule of 31 to 32 miles an hour with a train from 5 to 12 cars?

A. Yes, 12 is exceptional, the average train is from 9 to 10 cars.

Q. State if you couldn't make that run quicker if you had an engine, baggage and two passenger coaches?

A. Under the same conditions, yes.

Q. This schedule from Rocky Mount to Selma is one hour and 25 minutes?

A. Yes, sir.

Q. You make your run of 204 miles with an average number of cars from 10 to 12 miles with a sleeper and express and do local work and you meet two superior trains on your run?

A. I said we make two local stops at certain intervals, it is not at every station.

Q. What time do you leave Raleigh?

A. 4 o'clock in the morning; this double train only runs from here to Hamlet, 97 miles, the 106 miles beyond we have from 5 to 7 cars, rarely over that.

Q. How far from here to Hamlet?

A. 97 miles.

Q. It is — evidence that the Coast Line train No. 39, through train,

running from 8 to 10 and 12 cars, two express cars, two or three sleepers, doing local work at all of these stations on schedule and express and mail and meeting one superior train, is scheduled to make that run in an hour and 20 minutes?

A. And make all those stops. I don't believe that could be done.

(Witness is shown schedule.)

269 Q. Now 39 is scheduled on the Coast Line to leave South Rocky Mount at 1:30 and arrive at Selma at 2:50?

A. Yes.

Q. You don't think that can be done?

A. The schedule don't say it is to be done.

Q. Don't railroads make schedules to be run?

A. Those are flag stops, that is no guide at all.

Q. Do you undertake to say that the Coast Line publishes a schedule that is no guide to the traveling public—you have testified about this proposed train stopping at all the flag stations?

A. He asked me the question and I answered it.

Q. State if this train with a baggage coach and two passenger coaches couldn't make this schedule as easily as this 39 with ten cars, two express cars and a sleeper?

A. It ought to make it easier.

Q. I will ask you if this light train leaving Rocky Mount at 12:50, getting to Selma at 2:25, giving an hour and 35 minutes, oughtn't that train make that run, having only two trains to pass if those two trains are on time?

A. It would be a mighty fast schedule if they made it.

Q. Then the schedule of 39 leaving South Rocky Mount at 1:30 and getting to Selma at 2:50 is a mighty fast schedule?

A. Yes; if they make all those stops.

Q. How fast can a train of that kind, one baggage and two passenger coaches make on a perfectly straight track, good condition of road bed and a good first-class engine?

A. Most any kind of speed you want to; it could run 50 miles an hour safely.

Q. Do you know Mr. B. R. Lacy?

A. Yes.

Q. He has been an engineer for a long time?

A. Yes.

Q. You have never run over this particular run yourself?

A. No, sir; I have been over it several times, I have never run an engine over it.

Q. How many stops do you make on your run from here to Columbia?

A. Sanford and Southern Pines, those are the only regular stops that we have.

270 Q. How many flag stations?

A. Apex, Moncure, Hamlet, Aberdeen and Pine Bluff—five.

Q. How many regular stops?

A. Seven between here and Hamlet, from Hamlet to Columbia, three regular stops, Cheraw, McBee and Camden, and seven flag stops. That makes 17 regular and flag stops on this run of 204 miles.

Q. When your train is flagged you stop?

A. I don't remember going a trip that we have had to make all those flag stops, but if we are flagged down we have to stop.

Q. You have figured out that it would cost to run a train $38.31, will you please itemize that for me?

A. The engineer, $4.32 for running 100 miles; fireman $1.72; fuel, four tons, $12; waste and oil, $1; water, $1; conductor, $3; baggage master, $1.65; flagman, $1.45; one brakeman, $1. To turn that engine, labor necessary to hostle engine and the machinist to do any repairs will be $3.97; if the engine is turned at the other end of the road simply for the use of the Y, the usual cost is $1; material used for repairs will be $4 per trip; depreciation of engine at life of fourteen years would be $2.20 per day—that is all.

Q. That is a run of 84 miles—how much more would it cost to run that train 156 miles, figure that out.

A, It would cost the difference in fuel; it would take two more tons of coal, another tank of water—I estimate the water at 50 cents per tank—two tons of coal, $6, and it would be an increase in pay of conductor of I don't know how much—they are paid on a sliding scale.

Q. It is testified that the increase of conductor's pay would be thirty cents per day.

A. It would increase pay of engineer—they are paid on a basis of 133 miles, and the difference between 133 and 156 makes 84 cents, would be $5.07 instead of $4.32.

Q. What other increase?

A. 40 per cent of that for the fireman—he would get about 30 for the fireman; increase of water, porter, increase of oil, which would be a small item. I don't know of anything more. The fur-
271 ther you run an engine the more wear and tear. The whole thing is $38.41 exclusive of cars.

Q. That is a depreciation upon the basis of what?

A. 14 years.

Q. What cost?

A. $12,000.

Q. What is that item?

A. $2.20.

Q. Upon the basis of cost of $12,000?

A. Yes.

Q. If it cost $3,000?

A. It would be one-fourth of that amount.

Q. This estimate of $4 for material, etc., is rather guess work?

A. It is based upon observation and experience. You can't figure what it would take one engine a day exactly.

Q. $12,000 is a figure for a large engine isn't it?
A. No; a medium-sized engine, necessary to run a train of this size.

Mr. JONES:

Q. What sort of an engine is a $3,000 engine?
A. I don't know of any engine of that kind.
Q. They ask about your run from here to Columbia, haven't you the right of way?
A. I have the right of way over everything going north.
Q. State whether you always make your run on schedule time?
A. No, sir.
Q. Do you often fail to make it?
—. Yes, frequently, and on this twelve car train we never make it, we lose time on the schedule.

D. M. KING, witness for defendant, sworn, testifies:

Direct by Mr. JONES:

Q. Where do you live?
A. Raleigh.
Q. How long have you lived in Raleigh?
A. Since '74.
Q. What is your business?
A. I run a locomotive on the S. A. L. Ry.
Q. For how long?
A. Since '76.
Q. What other position have you occupied on the S. A. L.?
272 A. Road foreman of engines, general foreman, master mechanic.
Q. You are pretty well acquainted with engines?
A. Yes, sir.
Q. Where do you run now?
A. Between Norlina and Richmond.
Q. Do you know the cost of running an engine?
A. I think so.
Q. State to his honor what would be the cost of running an extra engine and train leaving there between 12:55 and 1 and Selma, a distance of 42 miles—the cost per day?
A. $4.32 for the engineer, the fireman would get 40 per cent., which would amount to $1.72; the conductor would get $3 per day, and the baggage master would get $1.65 and the flagman, $1.45, I think, and the porter $1.40 per day, I think.
Q. How much coal would it take?
A. Four tons.
Q. At what price?
A. $3 on the chute.
Q. How much would the water cost?

A. Two tanks of water, furnishing it yourself, would cost you 50 cents, two tanks would amount to $1.

Q. How about waste and oil?

A. Waste and oil and all purposes necessary for engine, $1 per day.

Q. Now about depreciation?

A. You can buy an engine which would be necessary to do the service here, I understand, for $12,000 and the depreciation on that, we estimate the life at 14 years, would be $2 and something per day.

Q. About repairs?

A. It would cost according to the S. A. L. what is known to us as turning an engine when we say carry across the table and bring her back, and making the necessary repairs, $3.97 per day.

Q. The turn at Selma or using the Y what would that be?

A. Our experience is we generally pay $1.

Q. And the cost of material for repairs?

A. Average $4 per day, that would include overhauling engine and keeping up; the material is not charged in that account of turning engines. That makes $38.31.

273 Q. Could you give the cost of the coaches and railroad cars?

A. I think the best you could do on buying first-class coaches is $7,000 apiece.

Q. For a baggage car?

A. $3,000, I think.

Q. Do you know anything about the wear and tear of an engine?

A. No, I can't say that I do.

Q. Examine the schedule.

(Witness is shown schedule.)

Q. The extra train proposed leaves Rocky Mount at 12:55 or 1 o'clock and must reach Selma at 2:25—after examining the schedule state whether that train, the extra train, can make Selma from Rocky Mount, leaving there at 12:55 or 1 in an hour and 25 minutes?

A. Not without disarranging the figures already on the sheet, according to her leaving at 12:55 or 1, she would be at Kenly at 2:27.

Q. How far is Kenly from Selma?

A. Nine miles and eighth-tenths.

Q. What would she meet at Kenly?

A. No. 40 there and 212.

Q. State whether she would meet any other trains between stations under that schedule as arranged?

A. Three between stations.

Q. Running along that schedule, now suppose she has to make at least seven or eight stops and one or two slow downs at Rocky

Mount and Wilson and one or two flag stations, what time would she make Selma?

A. I don't know; I can't say what time she could make it; it would not be at 2:25 if she has got to take care of herself against these trains.

Q. Could she make it if it was not for meeting those trains between stations?

A. I should say she could if there was nothing on the road but her, but she has got to keep out of the way of these trains.

Q. Is it possible for her to do it?

A. Not with this schedule here she can't make it at 2:25.

274 Mr. BUSBEE:

Q. If she had no other train to meet she could make it at 1:20?

A. Yes.

Q. Is that a very fast schedule for No. 39, which leaves Rocky Mount at 1:30 and gets to Selma at 2:50 and meeting one superior train at two places?

A. With the number of cars she has it is.

Q. Suppose this train would meet two trains and she meets both on schedule time and they reach the meeting point prior to her arrival and she finds them on the siding, would that delay her materially?

A. No, not if she finds them on the siding, that would be equivalent to a clear track.

Q. Suppose that the trains are on time and the schedule time is kept and they meet promptly, would that delay her?

A. I should say not.

Q. We will assume that she meets 72 and 212 and she is a superior train to both of them and has the right of way and they stand out of her way, would that delay her?

A. Nothing would interfere with her that was out of her way.

Q. What is your answer as to the reasonableness of that schedule regarding speed considering the condition of the track?

A. The schedule is safe enough provided the train *train* has the track and does not have to outrun the schedule, giving her *an* forty-two minutes is not a rapid speed, but if other trains detain her and she has got to run fast enough to make it up that is what makes it rapid.

Q. Suppose under the schedule she is not delayed by these trains?

A. She could make it in an hour and 25 minutes.

Q. Now, Mr. King, if instead of running 84 miles or 133 as to your calculation she has to run 156, what would be the additional cost of operating an engine—how much would be additional for fuel?

A. $6.

Q. For water?

A. $1; for the engineer it would cost .72 per mile, for fireman, 29 per mile. I don't know about the conductor.

Q. If the value of the engine was $3,100 and the value of
275 the cars $2,000, first-class, and $1,500, second-class, and baggage car $8,000, wouldn't that lessen your estimate?

A. Yes, sir.

Col. ARGO:

Q. Suppose that in that run from Rocky Mount to Selma, 42 miles, this extra train had only two trains to encounter, both passenger trains, everything else getting out of its way, couldn't it make that run in an hour and 20 minutes?

A. It would take her five minutes to take the side-track—an engine that would be on that service would make 60 miles an hour, but the higher rate of speed the more danger there is attached.

Q. There would be no more danger in that run than by the usual fast mails?

A. I don't think so.

Mr. JONES:

Q. What kind of engine is a $3,100 engine?

A. I never saw one, except one to go in the scrap pile; I wouldn't like to run a $3,100 engine.

Q. They asked you was it practicable to run this extra from Selma to Rocky Mount in one hour and 25 minutes, taking the conditions that exist?

A. It could not be done without rearranging this table.

THOS. McMILLAN, witness for defendant.

Direct by Mr. DAVIS:

Q. You are a locomotive engineer?

A. Yes, sir.

Q. How long have you been in the employ of the A. C. L.?

A. 30 years.

Q. How long have you been engineer?

A. 25 years.

Q. What is your run now?

A. From Wilmington to Rocky Mount on a passenger train.

Q. You are acquainted with that run between Contentnea and Rocky Mount?

A. Yes, sir.

Q. You know the road between Contentnea and Selma?

A. Yes.

(Witness examines diagram.)

Q. Leaving Rocky Mount at 12:55 or 12 you would meet first what train?

A. 72.

276 Q. Due where?

A. 72 is a Southern freight, due at South Rocky Mount at 1:05.

Q. If 72 was on time, about what time would you get out of South Rocky Mount?

A. After she cleared. I suppose they couldn't run that freight train, they would have to rearrange the schedule of that freight train 72.

Q. Could or couldn't that run be made in an hour and 20 or 25 minutes from Rocky Mount to Selma between the hours of 12:55 and 2:25, meeting the trains shown on the diagram and making stops between Rocky Mount and Selma?

A. No, sir, not the way the trains are showing here, you would have to change the schedule of the trains.

Q. Give us your idea of the time it would require that train to run from Rocky Mount to Selma, leaving South Rocky Mount at 1:05, according to this schedule, would it be a certain connection?

A. It would have to take the siding at Elm City for 48.

Mr. WOODWARD:

Q. Which trains do you run on?

A. 48, 49, 41 and 42 from Wilmington to Rocky Mount.

Q. Yours is 48?

—. Yes, that is the day train.

Mr. DAVIS:

Q. Take the diagram and look at it and tell us if that run could be made from Rocky Mount to Selma between 12:55 and 2:25?

A. No, sir, not according to this schedule; some of these trains would have to be taken off the road.

Q. Do you know the condition of the track between Contentnea and South Rocky Mount?

A. It is very crowded. I run 48 and 49, and it has just got so that we leave Rocky Mount on time in the evening and there is hardly any telling when we are going to get out of Contentnea; we are delayed often at Sharpsburg and Elm City on account of 72; the side-track is there, and I was running a first-class train and had the right of track, but the road was so crowded that they gave me a meeting order for these trains, and the first train was carrying a signal, and it kept on that way until five passed and

I had to stay there for all of them, and I went to Wilson

277 and No. 40 had the right of track over me and I had to take

a side-track for her, and the track is tolerably crowded; there are lots going north and south. Now, I ran No. 48 and we have a big transfer to make on account of fish, sometimes we have 100 boxes of fish to unload from our train; it is doubtful whether we can get up on time and all of that express has got to be unloaded, and if 39 leaves Rocky Mount on time and goes to Wilson she will leave from 12 to 15 minutes late loading express.

Q. That schedule couldn't be made in that time on that road and meeting those trains?
A. No, sir, it could not.

Cross-examined by Mr. WOODWARD:

Q. You run from Wilmington to Rocky Mount?
A. Yes, sir.

Mr. DAVIS:

Q. You understand that diagram?
A. Yes, sir.

Mr. WOODWARD:

Q. Yours is 48 leaving Wilmington in the morning going to Rocky Mount?
A. Yes.
Q. What is the distance from Wilmington to Rocky Mount?
A. 124 miles.
Q. You say your train is due at Wilson at 1:16?
A. Yes.
Q. As a matter of fact you never arrive at Wilson at 1:16?
A. It is a rare thing.
Q. Do you ever arrive at Wilson at 1:16 a dozen times in a year?
A. Yes, of course we try to get there as early as we can.
Q. You rarely ever get there before half past one, do you?
A. Oh, yes.
Q. Isn't half past one your arriving time more frequently than any other time?
A. No, I couldn't say so.
Q. You run express cars?
A. Yes.
Q. During the vegetable season you carry large quantities of strawberries and you stop at points between Goldsboro and Wilmington to take strawberries, etc., and that delays you and you get
278 to Wilson uniformly between 1:25 and 2:30, don't you?
A. Somewhere in that neighborhood.
Q. Suppose this new train we are speaking of leaves South Rocky Mount at 12:55, now the only train it would meet between Wilson and we will say Elm City, is the freight due to arrive at South Rocky Mount at 1:05, now suppose that freight side tracks at Sharpsburg, what time would that passenger reach Sharpsburg; wouldn't it get there at two minutes past one?
A. About eight or nine minutes.
Q. Say it would get to Sharpsburg two or three minutes past 1?
A. Yes.
Q. This No. 72 sidetracks at Sharpsburg for this train, that can be done?
A. Yes.

Q. It would only delay that freight a few minutes?
A. Yes.
Q. Now that train goes on to Elm City and to Wilson, under this schedule it would reach Wilson about 1:23?
A. Yes.
—. Then if you arrived at Wilson at 1:25 this train would pass you at Wilson, wouldn't it?
A. Yes, if the schedule said so.
Q. Then if you didn't get to Wilson before 1:23 then you would pass this train at Wilson?
A. The north-bound train has the right of track over this train.
Q. You rarely ever get there before 1:23?
A. No, sir.
Q. And if you didn't get to Wilson before 1:23 you pass that train there?
A. Yes.
Q. Then this train would go on and would not meet any other train of any kind until it got to Micro, there it would meet No. 40?
A. Yes.
Q. Which of these trains have the right of way?
A. No. 40.
Q. If No. 40 was on time and this special train arrived at Micro it would get there about 2:03?
A. Yes, sir.
Q. No. 40 would pass there at that time and go on?
A. Yes.
279 Q. Then this new train wouldn't meet any other train until it got to Selma?
A. No, sir.
Q. So then the only passenger trains that this new train would meet are 48 and 40, which would meet you at Wilson if you didn't get to Wilson before 1:23?
A. Yes.
Q. And it would meet No. 40 at Micro at 2:03—how far is Micro from Selma?
A. I don't know—five miles.
Q. Then those are the only trains that this train leaving Rocky Mount at 12:55 would meet?
A. Yes.
Q. Then 40 due at Micro at 2:03 if it was as much as 15 or 20 minutes late, why then this new train would get to Selma before 40 reached Selma?
A. If it could have the right to go there it would.
Q. It would have the right, wouldn't it?
A. No, sir.
Q. How much late would 40 have to be before this train would go to Selma?
A. It couldn't go at all unless he had special orders.
Q. If No. 40, which is due at Micro at 2:03, was 20 minutes late

before getting to Selma, wouldn't that dispatcher instruct the special train to go to Selma?

A. No doubt that he would.

Q. And the days that 40 was late this train would get to Selma before 40 got there?

A. Yes.

Q. And the days that you reached Wilson late at 1:23 this special train would meet you at Wilson?

A. Yes.

Q. And neither you nor this train would be delayed?

A. It would be delayed long enough to pass her.

Q. Now, 39 is a heavy train, sleepers, two express coaches, carries mail, and is a very heavy train, that train is scheduled in this folder to leave South Rocky Mount at 1:30, reaching Selma at 2:50, an hour and 30 minutes?

A. Yes.

Q. 39 meets 40 where?

A. Kenly.

Q. Which has the right of way?

A. No. 40.

Q. Has 39 to take the sidetrack at Kenly for 40?

A. No, they give 39 all the advantage they can.

280 Q. That is a schedule of one hour and 20 minutes?

A. Yes.

Q. State if this Spring Hope train leaving Rocky Mount 12:55 couldn't easily make that run to Selma at 2:25?

A. Under the favorable circumstances you have pictured, of of course you could. Under those favorable circumstances I see no reason why the train shouldn't make connection. You are not accounting for delays, and it is hard to get over a road without delays. There is a great deal of business handled over that road, and you can't give the right of track to one train entirely. You are taking all of the trains out of its way.

Q. The corporation commission order provides that this train leaves Rocky Mount at 12:55, get to Selma at 2:55, with the provision that if the train is delayed by reason of the conditions which you have just expressed, it gives it 15 minutes more to make it, which will be an hour and 40 minutes, wouldn't that 15 minutes additional which is allowed in the event of any of these delays aid this train in making that schedule, wouldn't that render it easier?

A. Yes, of course.

Q. It could be made under the ordinary conditions when there is no unusual crowding of the track?

A. Yes, but that will rarely occur on that piece of track; there is lots of traffic on that piece of road.

Redirect by Mr. DAVIS:

Q. I understood Mr. Woodward to ask if you give that train a clear track, wipe out the freight trains and make No. 48 30 minutes

late every day, so you would have to meet her at Wilson, sidetrack No. 40 at Kenly and give you clear track, could you not make it in an hour and 20 minutes—that supposition is supposing 48 will always be late and that this train will never be late, and that 40 will always be late, so you would meet her at Selma, and although she is a superior train you side-track her at Micro for you to pass?

A. Yes.

281 Q. I understood you to say that under those conditions you could make it?

A. Yes.

Q. But if you had to meet No. 48 at Elm City, make all the usual stops, stopping at Contentnea, meeting 212 at Micro, you couldn't possibly make that schedule?

A. No, sir, I do not think you could.

MORNING, 29TH.

J. K. CAMPBELL says he was subpœnaed and came as a witness for the corporation commission. After he arrived the commission discharged him and the defendant than re-subpœnaed; that he is an engineer of the Atlantic Coast Line, running the train from Plymouth to Rocky Mount, the train which it is suggested may be extended to Selma.

Examination by Mr. POU:

Q. Now, in your opinion, could you run your train on to Selma on the schedule by which you would leave Rocky Mount at 12:55 and reach Selma at 2:25?

A. No, sir; we could not do it. It would run in conflict with the schedule of other trains.

Q. With your engine, could you make that time between Rocky Mount and Selma at 2:25?

A. No, sir.

Q. What size is your engine?

—. 14x24; five-foot driver.

Q. What is the best time you are able to make with the engine now?

A. 24 miles an hour and do local work.

Q. Is that about as good as you can do?

A. Yes, sir.

Q. Do you burn wood or coal?

A. Wood.

Q. Where are the repairs done?

A. At Rocky Mount.

Q. Is there any round-house or repair station at Plymouth?

A. No.

Q. Where is the only place your engine and train can receive necessary attention?

A. South Rocky Mount.

Q. State whether or not your engine is heavy enough to do shifting work at Rocky Mount.

A. No, sir.

Q. Do you know the duties of the Spring Hope engine and
282 crew?

A. Yes; it does shifting in the morning and makes the trip to Spring Hope twice a day.

Q. When does it have repairs?

A. At night.

Q. You were examined in a deposition at Rocky Mount and made about the same statement there?

A. Yes.

Cross-examination by Mr. WOODWARD:

Q. You run from Plymouth to Rocky Mount?

A. Yes, and return.

Q. What time do you get to Rocky Mount?

A. At 10:35 in the day.

Q. What time do you leave Rocky Mount?

A. Due to leave at 3:55.

Q. What time do you actually leave?

A. That varies; sometimes we are on time and sometimes a little later, sometimes as much as two hours late.

Q. You leave Rocky Mount after the arrival of No. 40?

A. Yes.

Q. It has been for some time rather late, has it not?

A. Yes, sometimes it is on time and sometimes late.

Q. What wages do you receive?

A. $3.90 a day for 12 hours.

Q. What do you do after you get to Rocky Mount between 4 and 6 o'clock?

A. Well, I carry my engine to the round-house, have the necessary repair work done, and do little things that an engineer would like to do on his engine.

Q. You are engaged in that from 4 to 6.

A. We are required to report with the engine 30 minutes before leaving time of the train; have to be there at 3:25.

Q. How about the fireman and porter?

A. The fireman assists in cleaning the engine.

Q. You know Mr. Swindell?

A. Yes.

Q. You heard his testimony the other day?

A. Yes.

Q. You say your engine is not large enough to do any switching?

A. I did not say it was not large enough to do any switching at all, but not at Rocky Mount.

283 Q. How many switching engines at Rocky Mount?

A. Several.

Q. Isn't you- engine large enough to do some switching?
A. It is large enough to handle a few cars.
Q. Is it in good repair?
A. Yes.
Q. Good condition?
A. Yes.
Q. Runs your train from Rocky Mount to Plymouth?
A. Yes.
Q. You have two passenger and a baggage car and sometimes an express car. Your engines carries all those cars?
A. Yes, sir.
Q. It could do some switching at Rocky Mount?
A. Of course it could do some.
Q. How old is your engine?
A. I can not tell. The boiler is comparatively new—six or seven years old.
Q. Do you know it is 30 years old?
A. No, I don't know, sir.
Q. How long have you been running it?
A. Since the 27th of last June.
Q. Where did you get it from?
A. Out of the shop.
Q. Where did it come from?
A. Been on the Coast Line some time.
Q. Where was it running before you took it?
A. It had been shifting at Wilson.
Q. So it was a shifting engine?
A. Yes, sir; they had to take it away from Wilson because it could not do the work.
Q. Who gave that reason? Who told you?
A. The engineer that ran the shifting engine told me.
Q. They had been using it as a shifting engine at Wilson?
A. Yes.
Q. If you had the same size of engine used on the Nashville branch you could make the run from Rocky Mount, leaving at 12:55, to Selma by 2:25, could you not?
A. Yes, if I had the right of track.
284 Q. You could make it, including the time consumed for stops, etc.
A. Yes.
Q. It takes about five minutes to take a siding?
A. Yes.
Q. So if you met two passenger trains it would take ten minutes?
A. Yes.
Q. Your train comes into Rocky Mount from Plymouth?
A. Yes, and stays there on the side-track from 10:35 to 3:55.
Q. You say it would take five minutes to pass a passenger train?
A. Yes.

Q. Leaving Rocky Mount after 12:50 and reaching Selma at 2:25—that is a schedule of about 30 or 35 miles an hour, is it not?

A. About.

Q. That could be done, including the ordinary stops and meeting two trains?

A. Yes, it might be done.

Q. Now, if there was no other obstruction on the track, could that time be made in safety on the main line with a good engine?

A. That might be done. Yes, without any other delay.

Q. What is the size of No. 39.

A. Heavy train.

Q. Heavy engine?

A. Yes.

Q. Two or three express cars?

A. Yes.

Q. Carries mail?

A. Yes.

Q. Do you know that the schedule of that train from Rocky Mount to Selma runs on a basis of 30 miles an hour?

A. Yes, sir.

Q. If this train left Rocky Mount at 12:50 it would get to Sharpsburg at 1:02?

A. Yes.

Q. Now if this freight that is due at Rocky Mount at 1:05 sidetracks at Sharpsburg, it would delay it how long?

A. Why that would get to Rocky Mount about 1:17.

Q. So it would only delay it about 12 minutes?

A. Yes.

Q. It would get to Wilson at 1:23?

A. It depends on the number of sections. It would have to sidetrack at Elm City for 48.

Q. This train would reach Wilson at 1:23.

A. Ordinarily.

285 Q. If 48 did not get away from Elm City before 1:23 they would meet there?

A. Yes.

Q. You heard Mr. McMillan's testimony?

A. Yes.

Q. He said he rarely ever left Wilson before 1:23?

A. Yes.

Q. Your train would pass 48?

A. Yes, provided it had orders.

Q. Now, then, this train would go on to Micro?

A. Yes.

Q. And there meet 40?

A. 212 would be there, too. After 40 passed I would have to back out and go on.

Q. Suppose the time sheets of the Coast Line show that No. 40, which is due to meet this train at Micro at 2:03 is uniformly more

than 20 minutes late. This train would reach Selma before No. 40 left Selma?

A. By special orders.

Q. Would have special orders if No. 40 was more than 20 minutes late?

A. It would depend.

Q. Would you know whether it had reached Selma?

A. Yes.

Q. Whether it had reached Smithfield or not?

A. Yes.

Q. Four Oaks or not?

A. Yes.

Q. It would be the duty of the operator to let you know whether or not No. 40 was more than 20 minutes late?

A. Yes. There might be an accident or something and it would fall down.

Q. So in case No. 40 "fell down" you would stay at Micro?

A. Yes.

Mr. Pou:

Q. What sort of sections do those trains run in?

A. One, two and sometimes five sections.

Q. If required to go to Selma, how many hours of labor would that be?

A. Thirteen hours.

Q. Could any crew stand such a run?

A. Not every day in the week; no, not back to Plymouth every day. I run every day, Sunday and all.

Q. Now, Mr. Campbell, Elm City is the governing point. Leaving Elm City at the time you would have to leave it, taking
286 out all stops, to get to Selma would require what speed between stations?

A. A little over 50 miles an hour.

Q. They have said something about your engine being a light one; what is the difference in the amount of shifting at Wilson and at South Rocky Mount?

A. Don't know. Never shifted there.

Q. You know Wilson is a way station?

A. Yes.

Q. Why was the engine moved from Wilson?

A. So they could get a larger engine there.

—. I will ask this: The freight trains going north—suppose they are held back and made late—does that have any effect on the pay of the engineers?

A. Of course.

Q. How much does it increase it?

A. They are paid 35 cents an hour.

Cross-examination by Mr. WOODWARD:

Q. Mr. Campbell, you get to Rocky Mount at 10:35. If required to go to Selma you would leave at 12:50. If you got to Selma at 2:25 and left Selma at 3:00 you would get back to Rocky Mount upon this same schedule at 4:20?

A. Yes. The engine would have to be prepared to go on the return trip to Plymouth.

Q. You have two hours for it to be repaired?

A. The train is not always on time.

Q. When you leave Plymouth in the morning, do you always get there on time?

A. Very seldom before 10:45. After we get to Rocky Mount we have to unload express, turn on the Y and it is about 11:15 or 11:20 before we get to the round house.

Q. How many engines do they keep at Rocky Mount?

A. Depends upon business. This time of the year there are none there.

(Record is put in evidence.)

The defendant puts in evidence the schedules of the Coast Line, Southern and Seaboard, those in force now and those in force at the time the order was made. Also map and diagram showing the condition of the track between Rocky Mount and Selma, marked Exhibit "O."

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(Defendant rests its case.) (Rebutted.)

Mr. H. M. EMERSON, being recalled, testified as follows:

Q. On the stand yesterday you were asked about certain rates and said you would get your folder. I understood you to say yesterday that there were certain points in eastern Carolina where coupons tickets were sold. What are they?

A. Tickets reading to southern roads.

Q. So from Greenville to Raleigh you would sell a ticket via Selma or Weldon?

A. Yes.

Q. Would the rate from Greenville via Selma and Weldon be the same?

A. Yes, to Raleigh.

Q. Does Plymouth sell them?

A. Yes.

Q. Washington?

A. Yes. The rate is the same via Weldon.

Q. Tarboro?

A. The rate from Tarboro to Raleigh via Selma is $2.75 and a passenger can travel from Tarboro to Raleigh via Weldon on a mileage ticket, the cost being $3.50, or 75 cents higher.

Q. Suppose a person bought the regular local ticket?

A. That rate—I could not say what it would be. It might be the difference in the mileage, but not necessarily so.

Q. So these points named are the only points in eastern Carolina where these coupons tickets are sold.

A. In ordinary travel, that is if you refer to those on the sheet. They are shown on sheet No. 92.

Q. Take a passenger buying a ticket from the two stations, House and Greenville, going by Weldon. Take House, for instance. That passenger coming to Raleigh via Weldon would it not cost him more to get here that way than to come by Selma?

A. Yes.

Q. It would cost him 3¼ cents a mile on the increase of distance?

A. Not necessarily.

288 Q. If it is 40 miles further than Selma, would it not cost that passenger $1.30 more.

A. No, sir. He could use a mileage ticket via Weldon at 2½ cents per mile through to Raleigh.

Q. You do not sell less than a 1000 mile ticket?

A. No.

Q. If he did not feel like investing in one, it would cost $1.25 more?

A. No; not necessarily.

Q. Is there any coupon point from House to Weldon?

A. None from House.

Q. So a passenger from House would have to pay that much more unless he bought a 1000 mile ticket?

A. If he moved to-day. In general we had tickets on sale the first part of January to practically all southern railway points. Christmas holiday rates.

Q. Suppose it is more than a 1,000 mile ticket, would it not cost a man more to go via Weldon to Raleigh than via Selma?

A. I doubt it. I am not prepared to say positively. He could travel to Raleigh via Weldon with a mileage ticket. He could not travel via Selma with a mileage ticket.

Q. It is 45 miles further from Greenville by Weldon than by Selma?

A. Yes.

Q. Mr. Emerson, would the same conditions apply to any passenger leaving any of the stations between Washington and Parmele?

A. A passenger leaving Pactolus or Horton going via Weldon, assuming it is 40 miles further by Weldon, it would cost him $1.30 more than by Selma. Assuming that there is a passenger from Pactolus.

Q. If there was a passenger at Pactolus does the train stop there?

A. Yes, sir.

Q. You assume that people live there?

A. Yes, sir.

Q. That they travel sometimes?

A. Yes, sir.

Q. If a passenger wanted to come to Raleigh via Weldon, would it not cost $1.30 more than by Selma?

A. Under the conditions of to-day, yes.

Q. If a passenger on your Plymouth train left Roberson-
289 ville or Parmele coming to Raleigh via Weldon, would he not have to pay more than coming by Selma?

A. Yes, sir.

Cross-examination by Mr. DOUGLASS:

Q. What is the difference from Plymouth to the nearest coupon station?

A. Tarboro, in the direction of Rocky Mount.

Q. The nearest of all?

A. Greenville or Washington, I should say. I would say that Washington was the nearest coupon point.

Q. What is the fare from Washington to Plymouth?

A. 50 cents.

Q. State whether a passenger could not buy a coupon ticket from Washington to Raleigh and use it from Pactolus to Raleigh?

A. Yes, sir.

Q. Suppose a man has a mileage book instead of a local ticket. Why can't he use that from the coupon stations?

A. He can only as far as Selma or Goldsboro, because those tickets are not good on the Southern railway. Good on steamboat lines and quite a number of others.

Plaintiff's Testimony in Rebuttal.

Mr. W. A. HORTON, being sworn, testifies as follows:

Examination by Mr. WOODWARD:

Q. Where do you reside?

A. Raleigh.

Q. What is your business?

A. Engineer on the Seaboard.

Q. How long have you been in the employ of the Seaboard?

A. 24 years this August.

Q. What is your run?

A. I run between Raleigh and Monroe, local passenger train.

Q. How many cars?

A. Six cars on regular train.

Q. What is the distance?

A. 150 miles.

290 Q. How many stops on that run?

A. Going south 26 stops.

Q. How many trains do you meet going south?

A. We meet about four scheduled trains.

Q. Do you meet any unscheduled trains?
A. Frequently there are extra trains, sometimes six to eight.
Q. Within what time do you make that run going?
A. With my run going south I am on duty 10 hours.
Q. What is the schedule time?
A. The schedule is figured at about 30 miles an hour.
Q. How many trains do you meet coming back?
A. About four schedule trains and there is sometimes extra trains.
Q. Do you meet any passenger trains coming back?
A. One at Hamlet.
Q. What is the distance from Sanford to Raleigh on this line?
A. 42 miles.
Q. On your return trip how many stops are there?
A. 29.
Q. How many trains do you meet?
A. Four regular schedule trains between Raleigh and Hamlet.
Q. Your run is from Raleigh to where?
A. Raleigh to Monroe via Hamlet.
Q. That is 150 miles from here?
A. Yes, sir.
Q. If you leave in the morning, when do you come back?
A. Leave Monroe in the morning and arrive here in the morning.
Q. Do you meet any extra trains?
A. Sometimes.
Q. What is your schedule coming back?
A. Four hours and 55 minutes from Monroe to Raleigh.
Q. From Sanford to Raleigh is how far?
A. 42 miles.
Q. How many freights do you meet?
A. Four.
Q. Four regular freights?
A. Yes, sir.
Q. Are there times when you meet special freight trains?
A. Yes, sir.
Q. What is your time between Sanford and Raleigh?
A. One hour and 28 minutes, that is the schedule time.
291 Q. Within what time do you make it generally?
A. Sometimes I make up 15 minutes on that run to Raleigh.
Q. Is that done with safety to your passengers and travel?
A. I suppose so.
Q. You have done it how long?
A. I have been on that run three years this last time. Been running seven or eight years before that.
Q. The run that we are inquiring about is from Rocky Mount to Selma. Can a train with two passenger coaches and a baggage coach make the run from Rocky Mount to Selma easily in one hour and 20 minutes?
A. If the run is open.
Q. Suppose it meets two passenger trains?

A. I should think they could stand a delay of ten minutes and make that.

Q. That includes the stopping?

A. We allow five minutes for each passenger train.

Q. Is five minutes ample time?

A. Yes, very reasonable.

Q. In railroad service, is not the right of way given passenger trains over freight trains?

A. Yes, on our road.

Q. Do you burn coal?

A. Yes, sir.

Q. How much coal does it take to make a run of 156 miles?

A. On my train?

Q. No, with a train of two passenger coaches and a baggage coach?

A. That ought to average 35 or 40 miles to the ton with that train.

Q. Would four tons make it?

A. Yes, sir, with a three-car train.

Q. If a train were running 76 miles a day, what additional cost would it be to the road to extend that run to 156 miles?

A. I have not made that calculation.

Cross-examination by Mr. DOUGLASS:

Q. When you are running to make up time, do you have right of way? Going south do you meet any passenger train?

A. No.

292 Q. In leaving Rocky Mount to Selma you have calculated only two stops?

A. No. I calculated the regular stops for the passenger train. After a delay of ten minutes the time should be made easily.

Q. What running time do you make?

A. 37½ or 40 miles an hour would make it.

Q. Your schedule is 30 miles an hour.

A. My schedule is figured at about that.

Q. Do you frequently run over sixty?

A. Yes, on account of delay and other considerations.

Q. So if your schedule was 40 miles an hour when you were behind, you would go to 90 miles would you?

A. Of course not; we could not go that fast.

Q. There is some limit then?

A. Yes, sir.

Q. Thirty miles is pretty fast moving.

A. Not if you keep moving.

Q. The first stop is a place called Sharpsburg. How long do you give the train there? You lose about a minute at a station.

A. I have never figured it out.

(Reference to map.)

Q. What time does 48 get to Elm City?

A. 1:31.

Q. Could this train leave Elm City before 1:31.

A. No, if there is a passenger train there that had the right of track.

Q. You could not leave until 1:31?

A. No.

Q. Where is the next train it would meet?

A. It is this new train leaving Elm City at 1:31.

Q. Would it not stop at Kenly until 212 could get to Kenly?

A. There would be a collision. With this track blocked he could not get through there, of course.

Q. Would not this new train wait at Kenly until 2:17 for No. 212?

—. If 212 was running regular like it is now they would meet there.

Q. Look at No. 40. If 212 was to get away from there at 2:17, I ask you if this new train would not be blocked there till 2:27?

A. This schedule shows that.

Q. This northbound train, No. 48, having right of way
293 regard-ess of freight trains, this new train could not leave Elm City until 1:31?

A. No, sir.

Q. There are five stops between Elm City and Selma that consume 15 minutes; then that would give you only 39 minutes from Elm City to Selma?

A. That, of course, would be taking out stops.

Q. What would your speed be then?

A. 55 miles an hour.

Q. Takes a very fine engine for that, does it not?

A. We could run 55 miles an hour running straight along.

Q. You run some of the fastest engines in the world on the Seaboard?

A. Yes, we have some fine engines.

Q. Suppose these vegetable trains were running in four or five sections. Would not either one or the other be delayed?

A. Yes.

Q. Do the crew and engineer that are delayed get extra pay?

A. After a certain number of hours.

Redirect by Mr. WOODWARD:

Q. I understand you to say that in the rules passengers have the right of way over freights?

A. Yes, sir.

Q. What is the distance from Rocky Mount to Sharpsburg?

A. 4.4 miles.

Q. If this train left Rocky Mount at 12:55, what time would it reach Sharpsburg, upon the basis of that schedule?

A. That would take nine minutes.

Recross by Mr. DOUGLASS:

Q. You parallel the Southern from here to Cary. What is the comparison with the Southern?

A. I have raced with them many a day. They give a pretty tight race, I think. They pull a lighter train than we do. They have a five-car train and we have six.

Mr. WOODWARD:

Q. This freight that is due at Rocky Mount at 1:05 would delay that freight how many minutes if it were to side-track at Sharpsburg.

A. If it waited for us it would delay 15 or 18 minutes.

294 Q. Eliminating the freight at Sharpsburg, there would be only two passenger trains that you would meet between Rocky Mount and Selma?

A. Yes, sir.

Q. You say five minutes is plenty of time for a siding?

A. That is about the usual delay.

Q. The order of the commission in fixing the schedule of this train requires the Southern to wait at Selma 15 minutes. When for any reason——

(Objection; objection sustained.)

Q. If the Southern is required to wait 15 minutes at Selma to provide for any unusual delays in this train making the schedule from Rocky Mount to Selma in an hour and 40 minutes, would not this 15 minutes be ample time without there was some unusual delay?

A. Yes.

Mr. BORDEN, recalled.

Examined by Mr. BUSBEE:

Q. Mr. Borden, what is the stock of the Atlantic Coast Line worth to-day?

(Objection by defendant; objection sustained; exception by plaintiff.)

Q. What was the stock of the Wilmington and Weldon Railroad Company worth twenty years ago?

(Objection by defendant; objection sustained; exception by plaintiff.)

Q. Is not the present value of the original stock of the Wilmington and Weldon Railroad Company, which constituted the basis of the present stock of the Atlantic Coast Line, to-day worth $1,900 or $2,000 in the market?

A. No, sir.

(Objection; objection sustained; plaintiff excepted.)

Q. What dividends are now being received by the holders of the original stock of the Wilmington and Weldon Railroad Company?

(Objection by defendant; objection sustained; exception by plaintiff.)

295 The plaintiff, at the conclusion of the evidence, and prior to the charge of the court, asked that the following special instructions be given to the jury, to-wit:

1. That in considering the practicability of operating the train from Rocky Mount to Selma ordered by the commission, the jury must not consider any delay that might be caused by its having to meet the freight trains shown on the schedule.

2. That in considering the practibility of operating said train, the jury must not consider any possible obstruction that might be caused by the freight trains Nos. 208 and 212.

3. That in considering the practicability of operating said train, the jury must consider the fact that if the order of the commission is put in force, said train so operated will have the right-of-way over any freight train shown on the present schedule, and will not be hindered by them.

4. That in considering the practicability of operating said train, the jury must not consider any obstruction or impediment caused by any freight train operated by any other road over the track of the defendant.

5. That in considering the practicability of operating said train, the jury must take into consideration the power and duty of the defendant to so adjust its schedule as to allow said train to be safely operated.

6. That in considering the practicability of operating said train, the jury must take into consideration the power and duty of the defendant to so arrange its schedule as to accommodate the said train.

7. That in considering the question of the practicability of operating the said train, the jury must assume that the proper construction of the said order of the commission is to give the said train until 2:40 p. m. to reach Selma.

8. That upon the whole testimony the jury are instructed to answer the second, third and fifth issues "yes."

296 The court declined to give the special instructions asked for, except as may appear from his charge to the jury, and the plaintiff excepted.

His honor charged the jury as follows:

Judge's Charge to the Jury.

GENTLEMEN OF THE JURY: I congratulate you that we are now approaching the conclusion of this long and very earnestly contested case. In the trial of a case of this importance, conducted by able counsel, many things will naturally be said calculated to excite the minds of the court and the jury. It is our duty to disregard all these

matters and confine our consideration to the law and evidence. This proceeding in a court of justice is rather a novelty. It is not trying the title to property or investigating the rights of an individual citizen. We are engaged in what I may call the review by the court of an administrative order of a department of State government.

It appears from the record that on the 26th of January after a hearing in the matter, the plaintiff corporation and commissioners made an order affecting the defendant, The Atlantic Coast Line railroad. This order is as follows: That the Atlantic Coast Line railroad shall furnish transportation for passengers from Rocky Mount to Selma after 12:50 p. m. and by or before 2:25 p. m. each day.

Now, in the investigation and determination of these issues, it is important that you remember that order and the time within which the plaintiffs order the defendant company to furnish that transportation, and that is between 12:50 p. m. and arriving at Selma by or before 2:25 p. m.

In the determination of this matter, gentlemen, it is necessary that a number of facts be found by the jury, and that certain issues be answered. So far as the financial ability of the defendant company to obey this order is concerned, the court deems it proper to say to you that while this evidence has been admitted and is con-
297 tained in the record of the evidence, it is not involved in any issue which is submitted to you for your determination.

The first issue is as follows:

Is it practicable for train No. 39 of the Atlantic Coast Line, due to arrive at Selma at 2:50 p. m., to make connection at Selma with train No. 135, west bound, of the Southern railway, due to leave Selma at 2:25 p. m.?

In order to properly understand these issues, you will bear in mind that the Atlantic Coast Line is a railroad from Rocky Mount on south. It has a branch leaving the main stem at a place called Contentnea. The admitted facts in this case show that for a number of years the Atlantic Coast Line ran this train, called No. 39, on a schedule purporting to arrive at Selma at 2:50 p. m., and the admitted facts show that for a number of years the Southern, whose track crosses the Atlantic Coast Line at Selma, ran a train from Goldsboro by Selma and on to Raleigh and Greensboro, and that that train arrived at Selma from Goldsboro at 2:50 and connected with this train No. 39. The admitted facts show that the connection was maintained at Selma by these two railroad companies for many years. The order of the railroad commissioners has been put in evidence in this case, and the fact is not disputed by the companies, and shows that in recent months the defendant company was not able to get this train, 39, to Selma by 2:50 p. m., and that there was a very irregular connection on that account.

The admitted facts in the case show that shortly prior to this order of January 26, the Southern railway changed its schedule, so as to arrive at Selma at 2:25 p. m. instead of 2:50 p. m. Now, upon

an investigation of that matter and a hearing had by the plaintiff corporation commission that made the order which I have read to you, in that order the corporation commission recite that it is impracticable for the defendant company to make that connection with their train No. 39, and that the order requiring them to do so with that particular train is revoked, and the court has held
298 that the finding of the plaintiff is binding upon them, and therefore the court directs you to answer the first issue "no."

The second issue is as follows:

Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return, and if so, what would be the additional expense?

The burden of proof is on the plaintiff to satisfy the jury by a preponderance of evidence on this issue; the undisputed fact is that it is 222 miles from Plymouth to Selma and return. The uncontradicted evidence is that such a daily run is too long for one engineer, one crew and one engine. The undisputed evidence is that the engine of the Plymouth train is a wood-burner of small power. The engineer who operates it testifies that the engine will make about twenty-four miles an hour in regular work. The engineer himself says he could not safely make the run from Rocky Mount to Smithfield within the time required and discharge his other duties. It is admitted defendant's road from Rocky Mount to Selma is equipped for coal-burning engines only, and has no wood racks or facilities for supplying wood.

The court thinks it would be unreasonable to expect the defendant to equip its main lines in order to supply one wood-burning engine only. The men who are charged with the management of this road have testified that it is not practicable to extend this run to Selma and return. The court is of opinion that the plaintiffs have failed to show that their suggestion in that respect is practicable, and you are directed to answer the second issue "no."

The third issue is this:

Is it practicable to make the said connection by the use of the Spring Hope train, and if so, what would be the additional expense?

The undisputed evidence is that the Spring Hope train makes two round trips a day from Rocky Mount to Spring Hope and return, and that Spring Hope is 19 miles from Rocky Mount. The
299 undisputed evidence shows that in the meantime the engineer and his engine and crew are engaged in doing switching of freight cars in the yards at Rocky Mount. It is admitted that this engine is a wood-burner, and that the main line is not equipped for wood-burning engines. The burden of proof is upon the plaintiff to satisfy the jury by preponderance upon the third issue, and the court being of the opinion that the plaintiffs have failed entirely to establish the practicability of their suggestion, you are directed to answer the third issue "no."

That brings us down to the fourth issue:

In order to make such connection, would the defendant company

have to run an additional train on its main line from Rocky Mount to Selma?

Upon all the evidence, and in any reasonable view of it, the court is of opinion that in order for the defendant to furnish transportation from Rocky Mount to Selma, between 12:50 p. m. by 2:25 p. m., it would be necessary for the defendant company to put on an additional train on its main line, and you are therefore directed to answer the fourth issue "yes."

These issues, gentlemen, which I have recited to you, the court has taken the responsibility of directing you how to answer them, as the court has the right to do under some circumstances. This brings us to the consideration of the fifth, sixth, seventh and eighth issues, and these issues are submitted to you for your consideration according to the facts.

Fifth issue. Is it practicable for said defendant to safely run its train according to plaintiff's order, having due regard for the number of trains and stops on the main line from Rocky Mount to Selma?

That issue presents purely a question of fact. It does not embrace any question as to whether the defendant company is financially able to run the train. That question is not submitted to you.

300 It involves the simple question of fact as to whether or not it is practicable and safe to run a train on the defendant's main line from Rocky Mount to Selma, leaving Rocky Mount after 12:50 and arrive at Selma by 2:25 p. m. The plaintiff contends that it is practicable and that it is safe. The defendant contends that it is neither practicable or safe. In determining that issue, you will have to consider what is the condition of the traffic upon the defendant's road between Rocky Mount and Selma. It is admitted that this main line extends from Rocky Mount to Wilson and from Wilson to Contentnea, and from there it branches and goes to Selma. The inquiry is whether or not between those particular points can the defendant operate this train with practicability and safety. In determining that question, you will have to consider the condition of traffic on the defendant's road. It is your duty to consider the number of trains operated upon it; your duty to bear in mind the rules which the defendant company has established for the government of its trains in passing each other. It is admitted that a passenger train has the right-of-way over a freight train; that is to say, that the freight train must take the side-track and let the passenger train go on by. It is also in evidence upon the part of the defendant company's officials that all trains which go north have right-of-way over those going south. The trains going south must take the side-track. These rules and regulations prescribed by the company will not be interfered with by the court. The court recognizes the right of the defendant to regulate and govern the management of its road according to those rules which experience has taught them to be safe and wise. The plaintiff contends that according to the defendant's own rule it could safely operate this train; that it would be allowed

unobstructed passage; that there are only seven stops on the road, and that although there are other trains running, that they would have no obstruction in making the schedule time, that prescribed by the order of the plaintiff.

The plaintiff also contends that the defendant has established a schedule of one hour and twenty minutes for one of
301 its trains, and that that is evidence to go to the jury that the schedule established for this particular train (or "new" train, as it is called in argument) is a practicable and safe schedule for the traveling public as well as for the railroad. The defendant contends that it is not safe, and that it is not practicable. Defendant contends that it has some thirty trains running on a single-track road from Contentnea to Rocky Mount. Defendant contends that although freight trains have to take the siding and passenger trains have right-of-way, passenger trains have to be held some times for freight trains to reach the siding when they are behind. The defendant says that it is engaged all during spring in operating a large number of truck trains carrying strawberries and vegetables from southeastern North Carolina and other points south to the north, and that those trains encumber their track. The defendant also contends that while it could establish a schedule of one hour and twenty minutes from Rocky Mount to Selma, the evidence shows that the train could not make it, as it is nearly always behind.

These are the contentions of both sides. It is purely a question of fact. You are asked to answer the question as to whether or not it is practicable and safe to make this schedule. If it is, answer the issue "yes;" you will then go on and consider the other three issues.

But if you answer it "no," that would end the case, and you need not consider any other issue, for if the schedule is not practicable and safe the law would not require it. So if you answer it "no," you need not consider the other issues.

The sixth issue. What would be the daily cost of operating such train from Rocky Mount to Selma and return?

What would be the daily cost? That involves purely a question of fact. It has been discussed very fully by counsel. The plaintiff contends that according to the testimony here, that that train would
not cost over $38 or $40 a day. They gave you their reasons
302 and the testimony upon which they rely to support the figures. The defendant claims that it would cost the company $63 a day to run that train. In ascertaining the cost of running the train, gentlemen, the court charges you that you will have to *estimate*, and that is all you can do in a matter of this sort. You must estimate the actual cost as to crew, engineer, fireman, conductor and the necessary expenses in operating a train; you must estimate the fuel on this coal-burning engine, oil, waste, depreciation of the engine; also make some estimate for what is called "trackage." It seems from the testimony that in estimating the cost of operating a train, railroad companies apportion the cost of maintaining track,

etc., between each train. All this has been fully gone into by counsel and by witnesses on both sides. Weigh the testimony carefully and see what would be a fair estimate of the cost of operating that train from Rocky Mount to Selma and return.

Seventh issue. What would be the daily receipts from that train?

That issue involves a question of fact for you to determine. The plaintiff contends that according to the testimony, taking the number of tickets which have been sold as a basis, that it would be somewhere between $40 and $48 per day. The defendant contends, according to the testimony of Mr. Emerson, the general passenger agent or traffic manager of the defendant road, that if this train were to carry all the passengers that go to Raleigh and west by Weldon and Selma both, that its daily receipts would not be more than $13 a day, and if those by Weldon were excluded, not more than $9 a day. It is admitted that the railroad fare from Rocky Mount to Selma is $1.35.

Now, in making this estimate as to the daily receipts from this train, you must endeavor not to include those passengers who might likely go by other trains. The evidence shows that the defendant company runs four trains from Rocky Mount to Selma daily, according to its schedule, and it is fair to presume that some
303 local travel from Rocky Mount to Selma would travel by those trains. It is therefore the duty of the jury to ascertain and estimate probable daily receipts from this train. The court can not help you in considering these matters, and you are, as it were, plowing in a new ground, and you will have to exercise common sense and the best judgment in answering these issues.

Eighth. Is it reasonable and proper that for the convenience of the traveling public the defendant company should be required to make such connection?

In order that you may intelligently consider that issue, I will read you the only section of the statute creating the North Carolina railroad commission which applies to this case, as far as I have been able to discover—section 21:

"All common carriers subject to the provisions of this act shall, according to their powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freights to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges against such connecting lines, and connecting lines shall be required to make as close connection as practicable for the convenience of the traveling public. And said common carrier shall obey all rules and regulations made by said commission relating to trackage. Any violation of the provisions of this section shall be punished by a fine of not less than five hundred dollars or exceeding five thousand dollars for each and every offence."

In order to intelligently and properly consider and decide that issue, you should divide it into two parts:

(1.) Is this Selma connection convenient to the traveling public represented by the territory around Tarboro, Rocky Mount, Nash and Wilson, who travel to Raleigh and points west of Raleigh?

After considering the evidence, the court is of opinion that if the evidence is to be believed, the afternoon connection at Selma
304 which was maintained for many years by the Southern railway and the Atlantic Coast Line was and is a convenience to such traveling public. Under our law, as the court understands it, the plaintiff must satisfy you not only that such a connection is a convenience to the traveling public, but also under this statute the plaintiff must satisfy the jury by a preponderance of evidence that the order requiring the defendant company to make such connection is a reasonable and proper order, for the law will not require the defendant company to do unreasonable things. The plaintiff contends that this order is reasonable and proper. The defendant contends that it is not reasonable and proper. The plaintiffs contend that according to the evidence in this case that this connection was maintained at Selma by the defendant company and the Southern railway for a period of time of ten or twelve years or more. The plaintiffs contend that during the time it was the principal route of travel by Wilson, Rocky Mount, Tarboro, Nash and that northeastern section northeast of Selma. The plaintiff contends that this connection was maintained by these two railroad companies because of the fact that it was a convenient and important route of travel for that section of the State. Defendant contends that it is not maintained for the reason that train No. 39, which was the train that made this connection and belonged to the defendant company, was unable to get there on time and meet the Southern Railway train at 2:50 p. m. Plaintiff contends that it was only after the Southern Railway Company discovered that the Coast Line could not maintain that connection that it changed its schedule and moved its train up. The defendant contends that numbers of people have arrived on the Atlantic Coast Line in the afternoon and been required to lie over there until late at night. The plaintiff contends that a large number of women and children have suffered inconvenience by arriving there in the afternoon and having to remain until late at night. A number of educational institutions, plaintiff contends, are in the west and
305 that this connection was a very important one to them, and that students and scholars bound for them have been delayed. Plaintiffs say that they have offered the jury testimony tending to prove that this connection is not only convenient, but that it is a reasonable demand to make, that the companies be required to keep it up. Plaintiffs say, furthermore, that in order to reach Raleigh from Tarboro, Wilson, Rocky Mount and that section by way of Weldon, the expense is much greater and that it makes an all-day journey. The defendants say that it is not a reasonable order. The

defendants contend that they run four trains from Rocky Mount to Selma during the twenty-four hours. The defendants contend that they have arranged for the people of that section two routes every day to Raleigh and the west. If they leave Rocky Mount in the night at 8 p. m., they get to Goldsboro, take the train at 9:40 at night and go on west. The defendants also contend that they leave Rocky Mount in the morning, take the train at Goldsboro at 7 and go on west, all of which has been explained to you by counsel in their addresses. Defendants also contend that the keeping up of this connection—if it is the duty of the defendant, it is the duty of the Southern railway also, and it is unreasonable to require defendant to run a special train to conform with the schedule of another railroad which has been recently changed.

All these contentions and more have been put before you, and I will not undertake to repeat them. Give it the consideration the matter deserves, and if you find that it is a convenient connection and that it is reasonable and proper to make it, answer "yes;" if not, "no."

Take the case, gentlemen.

The jury answered the issues as appears in the record.

Upon the verdict, his honor rendered judgment as appears in the record. The plaintiff excepted to the judgment, and assigned error as follows:

306 The plaintiff assigns the following errors:

1. The errors contained in the record proper and arising from the exceptions to the evidence, especially as from the refusal of his honor to permit the plaintiff to show the revenue derived for the twelve months ending February 26, 1904, from the sale of tickets at the following stations: Wilson, Elm City, Rocky Mount, Spring Hope, Nashville, Tarboro, Conetoe, Greenville, Washington, Battleboro, Whitaker, Black Creek, Bethel, Parmele, Robesonville, Everett's, Pactolus and Jamesville; and from the refusal of his honor to permit the plaintiff to show the receipts from freight shipped from the above mentioned points during the same period.

2. His honor erred in refusing to submit to the jury the issues tendered by the plaintiff.

3. His honor erred in submitting to the jury the issues as appear in the record.

4. His honor erred in refusing to submit the additional issues tendered by plaintiff.

5. His honor erred in refusing to give the special instructions to the jury asked for by the plaintiff.

6. His honor erred in directing the jury to answer the first issue "no."

7. His honor erred in directing the jury to answer the second issue "no."

8. His honor erred in directing the jury to answer the third issue "no."

9. His honor erred in instructing the jury to answer the fourth issue "yes."

10. His honor erred in charging the jury that the order of the plaintiff limited the arrival of the train at Selma to 2:25 instead of 2:40 p. m., it appearing that the corporation commission had directed the Southern railway train to be held fifteen minutes upon notice, beyond its schedule time for leaving Selma, and it further appearing that the Southern railway had submitted to that order of the commissioners, and had advised the defendant thereof.

307 11. His honor erred in charging the jury that the financial condition of the defendant is not involved in the determination of any of the issues submitted.

12. His honor erred in rendering the judgment set out in the record.

R. D. GILMER,
Attorney-General,
F. A. WOODARD,
ARGO & SHAFFER,
BUSBEE & BUSBEE,
Attorneys for Plaintiff.

The court denied plaintiff's motion for a new trial, and plaintiff excepted. From the judgment set out in the record, plaintiffs appealed. Notice waived. Bond not required. Case settled by consent by the judge, August 27, 1904.

G. H. BROWN, JR., Judge.

308 EXHIBIT "U." Train 49—Goldsboro.

1904.	Wilson.	Tarboro.	Rocky Mount.	Norfolk.	Ahoskie.	Aulander.	Kelford.	Eure.	Tunis.	Total.
March 20										0
21										0
22										0
23	2									2
24										0
25		1								1
26										0
27			1							1
28										0
29				1						1
30					1					1
31	1					1	2			4
April 1										0
2										0
3	1									1
4		1								1
5	1									1
6										0
7										0
8		1								1
9				2						2
10	2	1								3
11										0
12		1	2							3
13								1		1
14									2	2
15										0
16		2								2
17	1									1
18		1								1
19										0
20										0

Passengers from Wilson	8
Passengers from Tarboro	8
Passengers from Rocky Mount	3
Passengers from Norfolk	3
Passengers from Ahoskie	1
Passengers from Aulander	1
Passengers from Kelford	2
Passengers from Eure	1
Passengers from Tunis	2
Total	29

Average number of passengers per trip $\frac{29}{31}$.

309 EXHIBIT "U"—Continued.

Train 41—Goldsboro.

1904.	Wilson.	Rocky Mount.	Elm City.	Total.
March 20	1			1
21	4			4
22	6	3		9
23	4	1		5
24	1	1		2
25	3			3
26	1	2		3
27				0
28	4	1		5
29	5	1		6
30		2		2
31	6	1		7
April 1	1	1		2
2	4	2	2	8
3	4		1	5
4		1		1
5	4			4
6	5	1	2	8
7	1	1	2	4
8	2	2		4
9	3	2		5
10	1	2		3
11	3	2		5
12	5			5
13	2		2	4
14	3	1		4
15	1			1
16	1			1
17			1	1
18	5			5
19		1		1
20	3			3

Passengers from Wilson	83
Passengers from Rocky Mount	28
Passengers from Elm City	10
Total	121

Average number of passengers per trip $3\frac{16}{31}$.

310 EXHIBIT "U"—Continued. Train 31—Selma.

1904.	Tarboro.	Rocky Mount.	Wilson.	Norfolk.	Elm City.	So. Rocky Mt.	Suffolk.	Kenly.	Total.
March 20									0
21	1	3	3						7
22			2						2
23	1	4	2	1	1				9
24									0
25		1	5						6
26		1	3						4
27									0
28		3	1						4
29	4	1							5
30		3							3
31	3	4	3						10
April 1									0
2		1	1						2
3									0
4		2	7	1					10
5			1						1
6	4	1	14						19
6		1	7						8
8	1		6						7
9			4			2			6
10									0
11		1	5		3				9
12			2						2
13		2					1		3
14		3	1					1	5
15	2	1							3
16			7						7
17									0
18		3	1					2	6
19			2						2
20	5	1	3						9

Passengers from Tarboro	21
Passengers from Rocky Mount	36
Passengers from Wilson	80
Passengers from Norfolk	2
Passengers from Elm City	4
Passengers from South Rocky Mount	2
Passengers from Suffolk	1
Passengers from Kenly	3
Total	149

Average number of passengers per trip 5 14/27.

311 EXHIBIT "U"—Continued. Train 39—Selma.

1904.	Tarboro.	Wilson.	Rocky Mount.	Ayden.	Washington.	So. Rocky Mt.	Norfolk.	Ahoskie.	Elm City.	Total.
March 20	1	1								2
21	1	1								2
22										0
23										0
24	2									2
25			1							1
26		2								2
27			2							2
28		2	1	1						4
29										0
30					1					1
31										0
April 1			1							1
2			1			2	1			4
3		2								2
4		2						1		3
5					1					1
6										0
7			1							1
8										0
9			3							3
10		1								1
11										0
12					1				1	2
13		1								1
14										0
15										0
16	2									2
17	1									1
18										0
19								1		1
20			1							1

Passengers from Tarboro	5
Passengers from Wilson	14
Passengers from Rocky Mount	11
Passengers from Ayden	1
Passengers from Washington	3
Passengers from South Rocky Mount	2
Passengers from Norfolk	1
Passengers from Ahoskie	2
Passengers from Elm City	1
Total	40

Average number of passengers per trip 1¼.

312 EXHIBIT "U"—Continued.

Train 103—Goldsboro.

1904.	Norfolk.	Tarboro.	Wilson.	Kelford.	Rocky Mount.	Total.
March 20						0
21		1				1
22						0
23	1					1
24						0
25						0
26			2			2
27						0
28		1		1		2
29						0
30						0
31		1				1
April 1			1		1	2
2						0
3						0
4						0
5		2				2
6		3				3
7		1				1
8			1			1
9					1	1
10						0
11						0
12		1				1
13		2				2
14						0
15		1				1
16						0
17						0
18		1				1
19	3					3
20		1				1

Passengers from Norfolk 4
Passengers from Tarboro 15
Passengers from Wilson 4
Passengers from Kelford 1
Passengers from Rocky Mount 2

Total 26

Average number of passengers per trip $\frac{26}{37}$.

313 EXHIBIT "U"—Continued.

Train 58.

1904.	
March 20.....	2
21.....	2
22.....	1
23.....	2
24.....	0
25.....	0
26.....	2
27.....	0
28.....	8
29.....	4
30.....	3
31.....	4
April 1.....	3
2.....	3
3.....	3
4.....	3
5.....	0
6.....	0
7.....	1
8.....	0
9.....	0
10.....	2
11.....	1
12.....	0
13.....	4
14.....	4
15.....	2
16.....	3
17.....	0
18.....	1
19.....	2
20.....	1

Passengers for S. A. L. Rwy. via Weldon, N. C., for Raleigh and Points West.

Total number of passengers handled..... 61

Average number of passengers per trip $1\frac{32}{61}$.

Correct.

W. J. HAYLAW,
Supt. Transportation.

Sworn to and subscribed before — this 22d day of April, 1894.

ROBERT SCOTT,
[L. S.] Notary Public.

312 EXHIBIT "U"—Continued.

Train 103—Goldsboro.

1904.	Norfolk.	Tarboro.	Wilson.	Kelford.	Rocky Mount.	Total.
March 20						0
21		1				1
22						0
23	1					1
24						0
25						0
26			2			2
27						0
28		1		1		2
29						0
30						0
31		1				1
April 1			1		1	2
2						0
3						0
4						0
5		2				2
6		3				3
7		1				1
8			1			1
9					1	1
10						0
11						0
12		1				1
13		2				2
14						0
15		1				1
16						0
17						0
18		1				1
19	3					3
20		1				1

Passengers from Norfolk 4
Passengers from Tarboro 15
Passengers from Wilson 4
Passengers from Kelford 1
Passengers from Rocky Mount 2

Total 26

Average number of passengers per trip $\frac{26}{37}$.

313 EXHIBIT "U"—Continued.

Train 58.

1904.	
March 20.....	2
21.....	2
22.....	1
23.....	2
24.....	0
25.....	0
26.....	2
27.....	0
28.....	8
29.....	4
30.....	3
31.....	4
April 1.....	3
2.....	3
3.....	3
4.....	3
5.....	0
6.....	0
7.....	1
8.....	0
9.....	0
10.....	2
11.....	1
12.....	0
13.....	4
14.....	4
15.....	2
16.....	3
17.....	0
18.....	1
19.....	2
20.....	1

Passengers for S. A. L. Rwy. via Weldon, N. C., for Raleigh and Points West.

Total number of passengers handled..... 61

Average number of passengers per trip $1\frac{33}{61}$.

Correct.

W. J. HAYLAW,
Supt. Transportation.

Sworn to and subscribed before — this 22d day of April, 1894.

ROBERT SCOTT,
[L. S.] Notary Public.

314 EXHIBIT "P."

ACCOUNTANT DEPARTMENT—Desk 3,
January 23, 1904.

Mr. J. R. Kenly, fourth vice-president, building.

DEAR SIR: As per your verbal request of this date, I beg to enclose you herewith the following statements:

Statement of number of passengers handled on train 39 for points on Southern railway via Selma, for the period April to September, 1903.

Statement showing number of passengers handled on train 51, for points on Southern railway via Selma, for three months ending December 31, 1903.

Statement showing number of passengers handled on train 58 for points on S. A. L. railway, via Weldon, for three months ending December 31, 1903.

I trust that these statements will give you the information desired.

Yours truly,

GEO. S. LE GRAND,
Auditor of Passenger Receipts.

Atlantic Coast Line Railroad Company.

Accounting Department.

Statement Showing Number of Passengers Handled on Train 58 for Points on S. A. L. Railway via Weldon for Three Months Ending December 31, 1903.

	No. pass.
October	148
November	50
December	120
Total	318

Correct.

GEO. S. LE GRANDE,
Aud. Pass. Receipts.

Approved.
H. C. PRINCE,
Comptroller.

Wilmington, N. C., January 23, 1904.

(Copy.)

315 Atlantic Coast Line Railroad Company.

Accounting Department.

Statement Showing Number of Passengers Handled on Train 39 for Points on Southern Railway via Selma for Six Months Ending September 30, 1903.

	No. pass.
April	197
May	265
June	306
July	358
August	376
September	659
Total	2161

Correct.

GEO. S. LE GRAND,
Aud. Pass. Receipts.

Approved.
H. C. PRINCE,
Comptroller.

Wilmington, N. C., January 23, 1904.

(Copy.)

Atlantic Coast Line Railroad Company.

Accounting Department.

Statement Showing Number of Passengers Handled on Train 51 for Points on Southern Railway via Selma for Three Months Ending December 31, 1903.

October	213
November	79
December	132
Total	424

Correct.

GEO. S. LE GRAND,
Aud. Pass. Receipts.

Approved.
H. C. PRINCE,
Comptroller.

Wilmington, N. C., January 23, 1904.

316 Certificate of Clerk.

NORTH CAROLINA, Wake County, } ss:

I, W. M. Russ, clerk of the superior court of Wake county, State above named, do hereby certify that the foregoing is a full, true and complete transcript of the record of said court in the cause lately pending in said court, wherein the State of North Carolina on the relation of the North Carolina Corporation Commission is plaintiff, and the Atlantic Coast Line Railroad Company is defendant.

Witness my hand and official seal of said court, at office in Raleigh, this 29th day of August, A. D. 1904.

[SEAL.]

W. M. RUSS,
Clerk Superior Court.

Docket entries: Appeal docketed Sept. 26, 1904. Argued Nov. 30. 1904. Opinion of the court by Clark, C. J., handed down on Dec. 13, 1904.

317 NORTH CAROLINA CORPORATION COMMISSION v. ATLANTIC COAST LINE R. CO., Appellant.

Argo & Shaffer; Busbee & Busbee, F. A. Woodard with the attorney general for plaintiff; Junius Davis and Pou & Fuller for defendant.

It appears from the record that for some ten years prior to 11th October, 1903, the passenger traffic from a large portion of eastern North Carolina to Raleigh and the adjacent central part of the State was made by the defendant, Atlantic Coast Line Railroad Company, connecting with the Southern railway at Selma at 2:50 p. m. daily. For a year or two prior to that day the connection became very irregular, to the great inconvenience of the traveling public; passengers frequently being compelled to lie over at Selma till 11 o'clock at night, and then forced to take a mixed train, with uncomfortable accommodations, to go westward. The Southern railway, finding its time between Goldsboro and Greensboro (38 miles per hour) dangerous, on account of the condition or its track, had also lately changed its schedule to leave Goldsboro 30 minutes earlier. The matter being called to the attention of the corporation commission, it attempted to remedy the evil. After much correspondence with the officials of both roads, the commission on 8th December, 1903, made the following order: "Whereas, the convenience of the traveling public requires that close connection be made between the passenger trains on the Atlantic Coast Line railroad and the Southern railway at Selma daily in the afternoon of each day; and whereas, it appears

that such close connection is practicable: It is ordered that the Atlantic Coast Line railroad arrange its schedule so that the train will arrive at Selma at 2:25 p. m. each day, instead of 2:50 p. m., as the schedule now stands. It is further ordered that if the Atlantic Coast Line trains have passengers enroute for the Southern railway, and are delayed, notice shall be given to the Southern railway, and that the Southern railway shall wait 15 minutes for such delayed trains upon receipt of such notice. This order shall take effect December 20th, 1903. By order of the commission. Franklin McNeill, chairman, H. C.
318 Brown, clerk." This order quickened the arrival time of the Atlantic Coast Line train at Selma 25 minutes, but, as it required the Southern to wait at that point 15 minutes for delayed trains, it more than divided the time between the roads; exacting only 10 minutes' advance of time on the part of the defendant to procure this convenience to the traveling public. On 18th December, 1903, on the application of counsel for the defendant, the order was suspended, and both companies were notified to appear before the corporation commission at Raleigh on 12th January, 1904, that "the matter of the connection at Selma of the Atlantic Coast Line going south with that of the Southern railway going west in the afternoon might be heard, and asking both companies to have representatives present. The defendant appeared by its superintendent and general counsel, and the other company was also represented. After hearing both sides, "The situation being thoroughly discussed," the commission took the matter under advisement. On 16th January, 1904, the commission rendered a full finding of the facts, concluding with this judgment: "And it is therefore ordered that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 and by and before 2:25 p. m. each day. It is further ordered that the Southern railway hold its train No. 135 at Selma 15 minutes if for any reason the Atlantic Coast Line train connecting at that point is delayed." It was further ordered that the order should take effect 26th January, 1904. To this judgment the Southern Railway Company did not except. The Atlantic Coast Line filed five exceptions: (1) That it was not practicable to make connection at Selma by extending the run of either its Plymouth or its Springhope train to Selma; (2) that it would be unprofitable and a loss for it to make the connection by putting on an additional train from Rocky Mount to Selma; (3) the commission has no power to require it to put on extra trains; (4) that it is not practicable to make the connection without putting on an extra train, which the commission has no power to do; (5) that the order is
319 unreasonable, because passengers from Rocky Mount can make connection at Goldsboro at 6:50 a. m., or at Selma by night train over the Southern, or they could go up to Weldon and go over the Seaboard railroad. A letter in the record from the transportation department of the defendant company, dated 23d

January, 1904, states that prior to the breaking of connection at Selma the defendant's 2:50 p. m. train transported an average 12 passengers daily for the Southern at Selma, while since the average was only two. This shows 3,650 passengers annually inconvenienced by the failure to connect at that point. There is evidence elsewhere in the record that it was a very much larger number. On 2 February, 1904, the exceptions were heard by the commission upon the testimony of witnesses offered by the defendant and other evidence. Upon all the evidence, and after argument by counsel for defendant, the commission on the 13th February, 1904, made a fuller finding of fact, in the course of which it is recited, *inter alia*, that by the connection at Selma at 2:50 p. m. between the Atlantic Coast Line train No. 39 (south bound) and the Southern train No. 135 (west bound), "the greater portion of the section of the country reached by the said branch roads was for years furnished the nearest and cheapest route of travel to Raleigh and other Southern Railway points. The greater portion of the travel between the Atlantic Coast Line territory and the Southern Railway points was by this route. It is admitted in the correspondence of the Atlantic Coast Line in this matter that this was the most important connection, being the principal outlet for passengers en route from eastern Carolina territory to Raleigh and other Southern Railway points. There seems to have been no complaint about the failure of these railroad companies to keep this schedule and make this connection until about the year 1900. The Atlantic Coast Line informs the commission that 'this matter has been a frequent source of correspondence between this company and the Southern Railway Company since 1900, and that during this time frequent complaints have been made to this company by the Southern Railway Company of its failure to make schedule
320 time at Selma.'"

The commission found (giving its reasons) that passengers ought neighter to be required to go a much longer distance around by Weldon, nor to make connection at unreasonable hours at Goldsboro (6:50 a. m.), nor to take a night train (11 p. m.) connection at Selma, when a few minutes' quickened time would maintain the connection which had been made at Selma, in the early afternoon, for more than 10 years. The commission also found that the defendant could make the connection, if it chose, by extending the run of its Springhope train, which, coming down 19 miles from that place, reached Rocky Mount at 12:10, where it lay over until 4 p. m. before returning to Springhope, during which four hours it could easily be run 41 miles and back, making this connection. It thus concludes its judgment: "There is within the territory served by these branch lines approximately 400,000 inhabitants. The report of the Atlantic Coast Line to this commission for the fiscal year ending 30th June, 1903, shows net earnings from operation in North Carolina amounting to $1,943,116.63, and that there was a surplus of $1,293,983.54 after paying interest on its debts and 5% dividends on its stock, both common and preferred, from the net earnings of th

company's entire line. On a mileage basis, this will show that there was a surplus of net earnings in North Carolina for that year of approximately $324,493. The commission is of the opinion that the facilities given heretofore by the Atlantic Coast Line to the traveling public should not be lessened; that the connection furnished passengers from the Washington branch, the Norfolk & Carolina branch, the Plymouth branch, and the Nashville branch with No. 135 Southern Railway passenger train at Selma, and also for all points between Rocky Mount and Selma for nearly ten years, should be restored; that if this cannot be done by the Atlantic Coast Line train No. 39, as formerly, on account of this train being heavier, containing usually one or more express cars, and, in all, usually ten or more cars, and on account of increase in business between Richmond and Selma, which necessitates longer stops, then other facilities should be
321 furnished by the Atlantic Coast Line company; that this connection, which was the principal outlet for passengers from eastern Carolina to Selma and other Southern Railway points for the last ten years, instead of being abandoned, should be made permanent and certain; and that this result be accomplished by carrying out the order heretobefore made in this court. It is ordered, therefore, that the exceptions be, and they are hereby, overruled. Franklin McNeill, chairman."

From this order, thus repeated the third time, and after the fullest investigation occupying several months, the defendant appealed to the superior court. In that court the following issues were submitted, the corporation commission excepting:

"(1.) Is it practicable for train No. 39 of the Atlantic Coast Line, due to arrive at Selma at 2:50 p. m., to make connection at Selma with train No. 135, west bound, of the Southern railway, due to leave Selma at 2:25?

"(2.) Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return, and, if so, what would be the additional expense?

"(3.) Is it practicable to make said connection by the use of the Spring Hope train, and, if so, what would be the addition expense?

"(4.) In order to make such connection, would the defendant company have to run an additional train on its main line from Rocky Mount to Selma?"

The court directed the jury to answer the first three issues "no," and the fourth issue "yes," and the corporation commission excepted.

The following issues the jury were permitted to answer, to which they responded as follows:

"(5.) Is it practicable for said train to run the schedule prescribed in the plaintiff's order, having due regard to the number of trains and number of stops, on the defendant's main line from Rocky Mount to Selma? Yes.

322 "(6.) What would be the daily cost of operating such train from Rocky Mount to Selma and return? $40.

"(7.) What would be the probable daily receipts from such train? $25.00.

"(8.) Is it reasonable and proper that, for the convenience of the traveling public, the defendant company should be required to make such connection? Yes."

Upon the verdict the corporation commission moved for judgment, but the court rendered judgment for the defendant, giving as a reason that Code 1883, § 1957, (9), gave to railroad companies the right to regulate "the time and manner in which property and passengers shall be transported," and that it had been unable to find where this had been repealed; that he was of opinion that the statute had not conferred any power upon the corporation commission to order any connection to be made between the trains on connecting railroads, and hence he refrained from passing upon the defendant's further contention that the General Assembly had no constitutional right to grant such power. The corporation commission appealed, assigning several grounds of error, which will appear in the opinion.

CLARK, C. J. (after stating the facts):

For more than 10 years the people of a large part of the eastern portion of the State, having occasion to come to the capital or to the adjacent central section, have found their most direct and convenient route to be via Selma, at which point, by its schedule, the southbound train No. 39 of the defendant, Atlantic Coast Line, delivered its passengers at 2:50 p. m. daily in time to connect with the Southern railway west-bound train No. 135 from Goldsboro to Greensboro. On 3rd October, 1903, the Southern notified the corporation commission that, owing to the condition of its track, it was dangerous to maintain its speed—38 miles per hour—on its train No. 135—and proposed to leave Goldsboro 30 minutes sooner, which would cause its arrival a few minutes earlier at Selma. This the commission found to be proper and
323 reasonable. It was brought to the attention of the commission, by proper complaint made, that for many months the Atlantic Coast Line had failed to make this afternoon connection regularly at Selma at its schedule time, to the great inconvenience of the traveling public, and it was asked to order the afternoon connection to be resumed and observed. After much correspondence with the officials of both roads, the commission on 8th December, 1903, ordered that the afternoon connection should be made, and, to that end, directed that the defendant should quicken its schedule so as to arrive at Selma at 2:25 instead of 2:50, p. m. as before—an advance of 25 minutes; but, as the same order required the Southern train to wait 15 minutes whenever the Atlantic Coast Line was delayed for any cause, the order practically required the defendant to arrive ten minutes earlier. Objection being taken, the order was suspended, and both companies were summoned before the corporation commission, and, after investigation and argument, on 16th

January, 1904, the order was renewed. The Southern thereupon acquiesced in the order. The defendant alone filed exceptions, upon which testimony and argument were heard, and the commission renewed its order in the same terms, 13th February 1904. On appeal by the defendant to the superior court, there were sundry issues submitted, over the exception of the corporation commission. But as the order of the commission appealed from simply directed the connection to be made as in former years, prescribing no details of the method (which was left to the judgment of the defendant itself), save an acceleration of 25 minutes, subject to a delay of the Southern train of 15 minutes, when the defendant's train should be late, we think the matter could have been, and was, fully disposed of by an affirmative response of the jury to the eighth issue, "Is it reasonable and proper that, for convenience of the traveling public, the defendant company should be required to make such connection?" taken together with the findings upon the sixth and seventh issues, that, even if an additional train should have to be put on between Rocky Mount and Selma, the loss to the defendant would be only $15 per day,
324 which might be overcome by the increasel travel induced by uncertainty of cinnection, and the official returns made by the defendant to the commission 30th June, 1903, as required by law, and which are in the evidence, that the net earnings of the defendant from its operations in North Carolina amounted for the year ending 30th June, 1903, to $1,903,116.63, with a surplus of nearly $1,300,000 after paying interest on its debts, and 5 per cent. dividends on its stock, both common and preferred, from the net earnings of the entire line. It is surely sufficiently large, as it stands, to justify the affirmation of the order of the corporation commission that this great inconvenience to the public should be avoided, even at a cost to the defendant of $15.00 per day, when the net earnings of the defendant from all its operations in this State approximate $2,000,000 annually, and the net surplus of defendant's whole system, after payment of interest on its debts and dividends on its stock, whether watered or not, amounts to near $1,300,000 annually. And upon such verdict, the judge below should have entered judgment affirming the order of the corporation commission, and we should reverse his judgment and enter such judgment here, provided (1) the legislature has conferred such authority upon the commission; (2) and the legislature was not restrained by any provision of the State or Federal Constitution from granting such authority. Mr. Davis, the able and accomplished counsel of the defendant, states this clearly in his brief: "The defendant's contentions in brief are as follows: (1) That the corporation commission had no power or authority to make the order in question in this cause. (2) That the order is in violation of the constitutions of the United States and the State of North Carolina. (3) That the order is unreasonable and unjust." His third contenton is settled by the verdict and finding as above stated. As to the first proposition, we think the General Assembly clearly intended to confer and did con-

fer the power upon the commission to order connection made by any two railroad- when the public convenience required it, and the order was just and reasonable. This is not an arbitrary
325 power, for, as in this case, such order is subject to review by a judge and jury on an appeal to the superior court, whence a further appeal lies to this court.

Section 1 of the corporation commission act (Acts 1899, p. 291, c. 164), in enumerating the qualifications and the duties and powers of the commission, provides that "they shall have such general control and supervision of all railroad * * * companies or corporations and of all other compan[illegible]r corporations engaged in the carrying of freight or passenger[illegible] * * necessary to carry into effect the provisions of this act." Section 21 of the act provides that "all common carriers subject to the provisions of this act shall according to their powers afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freight to and from their several lines and those connecting therewith * * * and connecting lines shall be required to make as close connection as practicable for the convenience of the traveling public." This provision is positive, clear, and mandatory. Common carriers are (1) to afford all reasonable, proper, and equal facilities for the interchange of traffice and forwarding freight and passengers. This would include both the place and time of delivery and forwarding of passengers and freight. The terms of the law are general, and cannot be interpreted to mean alone the place at which passengers and freight are to be delivered. It does not mean simply facility for delivery, which might be confined to the place, but also requires facility for forwarding, which includes time as well, and prohibits such management as would produce delay in forwarding passengers. This requires close connection in point of time with connecting lines. (2.) In the second place, common carriers are "to make as close connection as practicable for the convenience of the traveling public." The defendant insists that this last requirement means simply a physical connection; that is, a track connection. It is contended that the demands of the law would be met by a simple joining of the railroad iron of one railroad to that of another, regardless of the time of the delivery of passengers
326 at the junction, and of their finding the means of "traveling" on or continuing their journey, and of the delays and inconveniences resulting from a failure to make connection of trains. The statement of this proposition, even if the acts were ambiguous, contains its own refutation. But the language is plain and unequivocal, and, as Mr. Argo, of counsel for the commission, well says, "the requirement is that 'connecting lines shall make as close connection as practicable for the convenience of the traveling public.' This means that those railroads that have or pretend to have a physical connection—a connection of tracks—shall also have as close a connection of trains as practicable, in order to secure the

convenience of the 'traveling public.' It is well known that the principal inconvenience attendant upon traveling arises from delays resulting from failure of trains to connect according to time schedules. It would contribute little to the convenience of the traveler to be dumped out upon a track making a 'physical connection,' and be compelled to wait for hours, frequently without food or adequate shelter, and in the night, for a train upon which he might proceed on his way. The connection required is one of trains as well as of tracks. The public cannot travel upon a track alone, nor upon a train without a track. Both are required, to furnish facilities for traveling at all, and a close connection of both to secure the convenience of the traveling public."

It is true that section 1957 (9) of the Code of 1883, originally enacted in 1871–72, gave to railroad companies themselves the right to "regulate the time and manner in which passengers and property shall be transported"; but by the act of 1891, p. 275, c. 320, creating a railroad commission, the State made a radical change in its attitude towards railroads. It asserted its power to supervise and regulate their conduct, forbade discrimination and issuance of free passes; conferred upon the railroad commission the power to regulate and to fix their charges for freight and passengers; to prohibit rebates; to make joint through rates; to make personal visitation of all railroad offices and places of business; to examine their officers,
327 agents, and employés under oath; to require all contracts and agreements between railroads as to their business in this State to be submitted for approval; to require annual reports from the railroads; to require the railroads to make repairs to their tracks, and additions to or changes of their stations; forbade the abandonment of any station without the permission of the commission; to require, if the commission saw fit, separate accommodations for the races at the stations and in the cars, and "that connecting lines shall be required to make as close connection as practicable for the convenience of the traveling public;" and many other matters which before that had been left to the railroads themselves. This act was passed after the fullest discussion for years before the people of the State. It expressed their deliberate conviction that the time had arrived when the State, in the public interest, should supervise and control the charges and the conduct of common carriers, including express companies, telegraphs, telephones, and steamboats. Similar legislation had preceded our act in England, in the Federal Congress, and in many of our sister States. Similar legislation has now been adopted in most of the States. The act of 1891 modified the Code, § 1957 (9), certainly to the extent that the right formerly conferred on railroad companies of fixing the time of running their trains was made a subject to the power of the commission to require connections to be made wherever public convenience should require this to be done, and the order was reasonable and just. That act (Laws 1891, p. 275, c. 320) had a repealing clause as to all previous legislation in conflict with it. The present act of 1899 renewed the

general provisions of the railroad commission law, with some extension of its powers and changes, but re-enacting verbatim the provision requiring connections to be made, and giving the corporation commission "general control and supervision of all railroads," with all powers "necessary to carry out the provisions of this act."

In this case the excuse of the defendant for its often missing
328 connection at Selma since 1900 is that train 39 was a through train, and that its increase in business made it more and more difficult to get to Selma in time. It may be natural that the officers of the company, looking to profits, should prefer the through business to the neglect of the convenience of the people of North Carolina, and should be reluctant to avoid the delay caused by heavy through business by putting $15 of its profits into affording the required convenience by an additional train, if necessary. But it is precisely because just and proper regard for public convenience did not always coincide with the largest profit to the corporation that the State had to enact a statute giving to the corporation commission the power to regulate their rates, require suitable connections to be made, and a general supervision of their conduct. An act of the legislature or order of the commission reducing the defendant's charges for freight and passengers many hundreds of thousand- of dollars would be valid if it left enough profit, over running expenses, "with economical salaries and management (of which the court will judge), to pay interest on its *bona fide* debt and some profit to stockholders." Railroad v. Wellman, 143 U. S. 339. It follows that this order, even if it cost the defendant $15 per day, is in the power of the commission, if it serves public convenience.

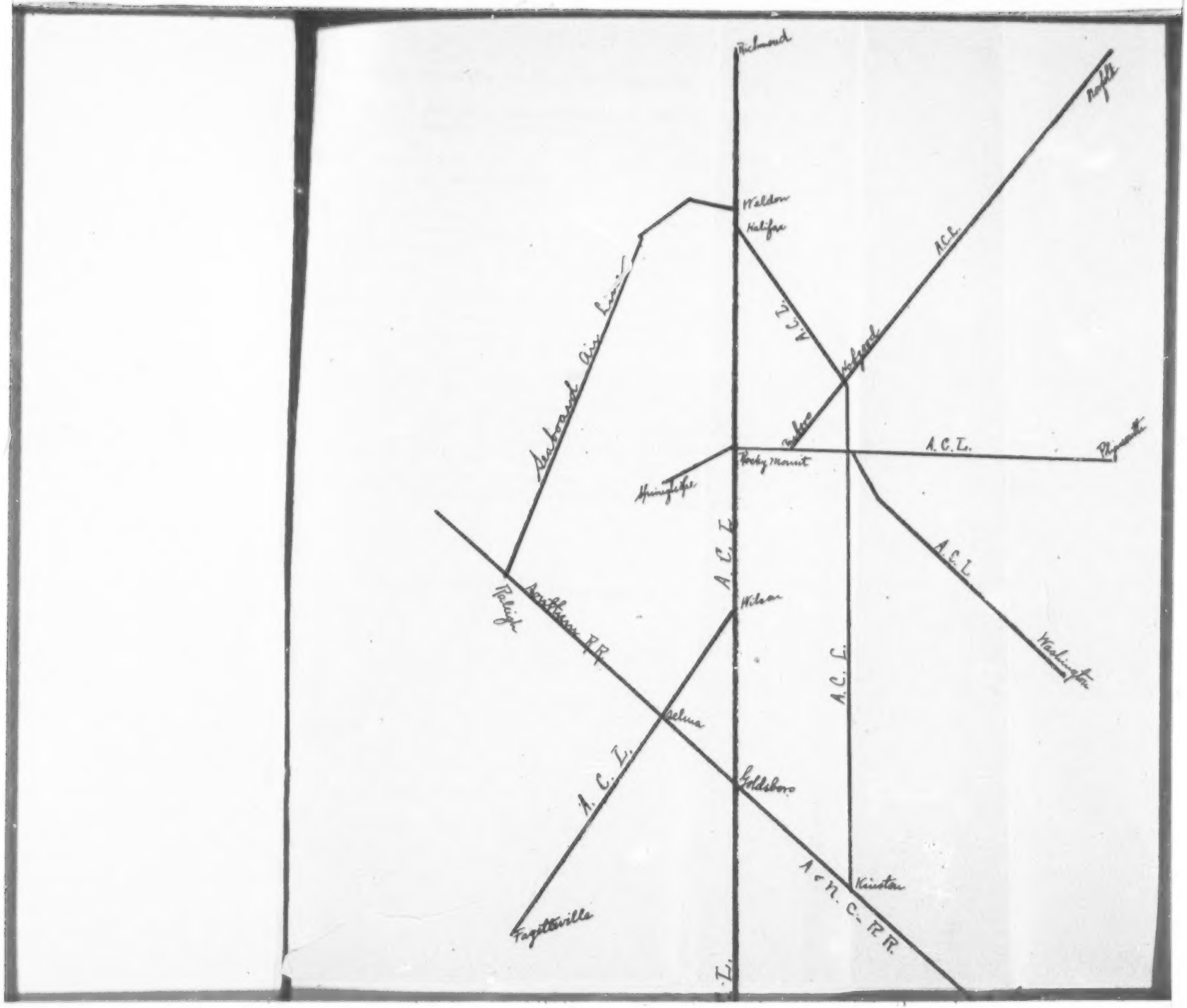
The other point, as to the constitutional power of the legislature to so enact, is also well settled. The general power of the legislature to provide reasonable rules and regulations, directly or through a commission, has been held by us in Express Co. v. Railroad, 111 N. C. 472; in Corporation Com. v. Railroad, 127 N. C. 288, and cases there cited. Among the Federal decisions, this was asserted in Munn v. Illinois, 94 U. S. 113, and has been reiterated in numerous cases since, collected in 9 Rose Notes, pp. 21–55. The doctrine is thus stated in People v. Budd, 117 N. Y. 1, "Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Navigation Co. v. Bank, 6 How. 382.
329 Their business is therefore affected with a public interest, within the meaning of the doctrine which Lord Hale has so forcibly stated. But we need go no further. Enough has already been said to show that when private property is devoted to a public use, it is subject to public regulation." This has been repeated over and over again in all the courts. Citation of authorities would be a work of supererogation. If the public can regulate the charges of a common carrier, so that only it is not deprived of all profit, as is held in Railroad v. Wellman, 143 U. S. 339, and Dow v. Beidelman, 125 U. S. 680, it can certainly require a connection, for the accommodation of thousands of our people, even if, at the utmost, it re-

quires a loss of $15 a day out of a railroad company making $2,000,000 net earnings annually out of its operation in this State. It is not necessary that the particular service required shall be profitable, if the total earnings in this State show a profit. It is precisely because some particular service which the public comfort or convenience may require is not profitable that the company declines to render it; it prefers to work the soft spots—the best paying ore—only; and it is precisely for that reason that the commission is vested with the power to require those things to be done, if reasonable and just (not necessarily profitable), as to which there is the protection of an appeal to the superior court, and a further review here.

In Railroad v. Gill, 156 U. S. 665, the court, affirming the Supreme Court of Arkansas in same case (54 Ark. 112), says that the common carrier cannot "attack as unjust a regulation which fixes a rate at which some part would be unremunerative. * * * To the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated." In Railroad v. Minn., 186 U. S. 261, the court says that if, upon the whole operations in hauling coal, the road makes a profit, the requirement as to a fair profit upon investment is satisfied, notwithstanding, under the order of the com-
330 mission, there would be a loss in hauling at the rate fixed in car-load lots. In Railroad v. Minn., *supra*, the court say: "We do not think it beyond the power of the State commission to reduce the freight upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and the burden is upon them to impeach the action of the commission in this particular." In Cantrell v. Railroad, 176 Ill. 512, the supreme court of Illinois laid down the same doctrine thus: "The sufficiency of the earnings of a railroad to justify the expense of running a separate passenger train over a certain branch line, constituting part of the entire system, is not to be determined by considering the profits of that branch alone, but of the whole business of the various parts of the roads operated with the branch as one continual line." In Railroad & S. S. Co. v. Commission of La., 33 South. 214, the supreme court of that State, througgh Nichols, C. J., in defining the powers possessed by the railroad commission, says: "They extend to matters concerning public comfort and convenience, and, in the consideration of matters of comfort and convenience, the number of persons who may be concerned or interested in some particular matter at some particular point enter as important factors in determining what is to be done. The commission cannot ignore the comfort and convenience of numbers of citizens on a line of travel or conveyance, to base their action exclusively upon a consideration of the amount of dollars and cents which may be involved. * * * In the present issue it cannot be claimed that the Southern Pacific road, either in the operation of its line as a whole or that part of it which falls within the limits of Louisiana, has not been and is not remunerative; nor can it be said that the Morgan Railroad Company is not

a paying corporation. * * * We do not think the point is made that, after the business of the railroad corporation had made it fairly remunerative, the commission is without general authority to direct that a portion of the 'surplus' profits (if that expression can be used) should be applied to the promotion of the comfort and convenience of the people along the line of road. When such a point in the business of the road is
331 reached, the rights of the 'general public' come clearly into view." In U. S. v. Trans. Mo. Freight Ass'n, 166 U. S., 332, the court says: "It must also be remembered that railways are corporations organized for public purposes, have been granted valuable franchises and privileges (and among such the right to take private property of citizens is not the least), and that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders." In Gladson v. Minn., 166 U. S. 430, the court says: "The State which created the corporation may make needful regulations of a police character for the government of the company while operating its road within the jurisdiction. It may prescribe the location and the plan of construction of the road, and the rate of speed at which the trains shall run, and the places at which they shall stop, and may make any other reasonable regulations for their management in order to secure the object of its incorportion, and the safety, good order, convenience, and comfort of its passengers and of the public." In Wisconsin v. Jacobson, 179 U. S. 297, the court says "that railroad- from the very outset have been regarded as public highways, and the right and duty of the Government to regulate, in a reasonable and proper manner, the conduct and business of a railroad corporation, have been founded upon that fact. Constituting public highways of a most impor-ant character, the functions of proper regulation by the Government spring from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests, and to subserve primarily the public good and convenience."

It is needless to multiply authorities. As the United States Supreme Court says in the last cited case, the defendant was granted incorporation by the State "to subserve primarily the public good and convenience." If [illegible] required for the public convenience and comfort were profitable per [illegible] commission would not be necessary to compel the [illegible] operation of such betterments. In Spring Valley Works v. Schottler, 110 U. S. 347, it was held that the State could regulate gas and water and other like companies and require them to furnish their customers at prices to be fixed by municipal authorities of the locality; and in Railroad v. Brimson, 154 U. S. 447, 151 U. S. 556, that the legislature could require, even as to railroads already built, the removal of grade crossings at railroad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Southern R.R.
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Goldsboro
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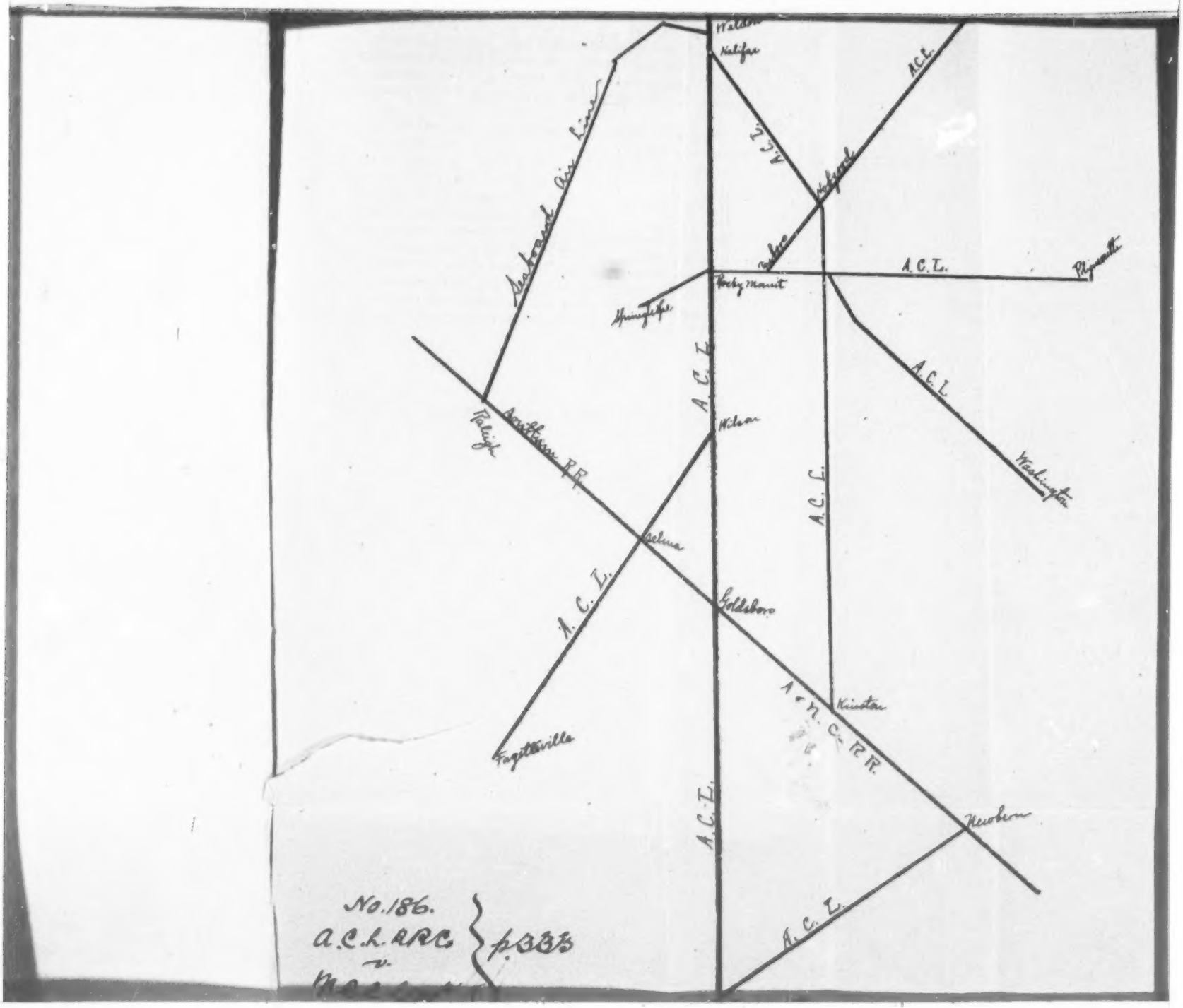

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pense, certainly, then, the police power extends to authorizing the State corporation commission to require two railroad companies to make connection. The corporation commission, after three several investigations, has found that this connection would subserve that end. The jury, after an overwhelming array of evidence, which we have not deemed it necessary to recapitulate or cite, has so found. The statute clearly gives the power, and the authorities are beyond question that the legislature could confer it. Requiring two railroads to make connection is the exercise of a far less power than making rates or compelling the erection of union depots at such junctions.

While we must reverse the decision below and affirm the judgment of the corporation commission, in view of the novelty and importance of this class of litigation, it is well to take notice of some of the exceptions taken by the commission.

It was error to direct a verdict upon the first four issues. Upon the first issue (whether it was practicable to make connection by train No. 39) and the second issue (whether it was practicable to make connection by extending the run of the Plymouth train to Selma) there was a conflict of evidence, and the issues were of fact, and, if material, should have been submitted to the jury. More especially was this true since the order of the commission was presumed to be valid, and the burden was on the defendant to show otherwise.

(Here follows diagram marked p. 333.)

334 Railroad v. Minn., 186 U. S. 264, 267. On the third issue, as to the practicability of running the Spring Hope train to Selma in the four hours that it lies over at Rocky Mount, the evidence was uncontradicted that this could be done; and there was even evidence from two reputable witnesses which proved, if believed by the jury, that the cost of the extra run would be only $10, showing a profit of $15 daily. The excuse that the engine was used for shifting at Rocky Mount, or that, being a wood burner, a small stand for wood would need to be built at Selma (the other engines being coal burners), did not deserve to be considered, against the inconvenience to thousands of the public caused by failure to make this connection. It follow- that it was error to instruct the jury, in response to the fourth issue, to find that the connection could only be made by an additional train from Rocky Mount to Selma.

The first seven issues were irrelevant and immaterial. The motion of the plaintiff for judgment upon the verdict should have been granted. The eighth issue, "Is it reasonable and proper that, for the convenience of the traveling public, the defendant company should be required to make such connection?" was answered "yes." This was the only material issue, and upon that finding alone the judgment should be entered here. This view is strengthened by the "inspection of the whole record," which shows that the findings upon the sixth and seventh issues are that, if the connection were made by the most expensive of the four methods named, the loss was only $15 per day, and the report of the defendant to the corporation commission, which is in the record, that its annual net earnings in this State were nearly $2,000,000. This shows the correctness of the finding upon the eighth issue, as to the reasonableness of the order, even in the most adverse view.

The court has the power to enter final judgment here, and on proper occasions has done so. Code, § 957; Alspaugh v. Winstead, 79 N. C. 526; Griffin v. Light Co., 111 N. C. 438, Cook v. Bank, 130 N. C. 184. Final judgment has been entered here not infrequently by order and without opinion, as a matter of course. In Bern-
335 hardt v. Brown, 118 N. C. 710, it is said: "If this court reverses or affirms the judgment below, it may, in its discretion enter a final judgement here, or direct it to be so entered below. By preference, and as a matter of convenience, the latter course is, unless in very exceptional cases, the course pursued, especially since the act of 1887 (chapter 192)." In Wilson v. Caldwell, 121 N. C. 473, which resembles this case in being a matter of public interest and not a judgment for money, it was held, "The judgment must therefore be affirmed, but, in view of the public interests involved, we deem it proper not to remand the case, but to enter final judgment in this court," which was done ousting the defendant from office and seating the relator. Among many other cases in which final judgment *were* entered here is White v. Auditor, 126 N. C. 584, and similar cases, in none of which the dissents were upon the

power of this court to enter final judgment here. Code, § 957, provides as to this court: "In every case the court may render such sentence, judgment and decree as on inspection of the whole record it shall appear to them ought in law to be rendered thereon." Rule 49 of this court provides for "a judgment docket of this court," with references to entries as to different causes of action in which recovery is adjudged; and rules 50 and 51, for the issuance of executions from this court on its judgments.

In this matter there has already been a year's delay. The inconvenience to the public continues each day. The act of the legislature for that reason expedites the hearing of these causes by giving them precedence of all other civil cases. Judgment will therefore be entered here reversing the judgment of the superior court, and affirming in all respects and declaring valid the order of the corporation commission made in this case 13th February, 1904. That order simply directed the defendant to make the connection daily at Selma at the time mentioned therein, without specifying whether this should be done by quickening the speed of train No. 39, or by extending the run of the Spring Hope or Plymouth train, or by putting on an extra train from Rocky Mount to Selma, and our
336 judgment leaves to the defendant the same liberty of choice as to the mode in which it shall put into effect the order of the commission. Owing to the possible necessity of making preparations to comply with this judgment, there will be a *cessat executio* till 10th February, 1905, entered on the judgment docket of this court, and until that date no mandate shall issue to the defendant upon this judgment.

The judgment of the superior court is reversed.

337 DOUGLASS, J., concurring:

I fully concur in the opinion of the court, but there is a question omitted therefrom which, though perhaps not essential to the present decision of the court, may become of the greatest importance in view of the Federal question raised or attempted to be raised by the defendant. I think there was error in excluding, upon the objection of the defendant, answers to the following questions asked by the plaintiff, to-wit: "Q. Mr. Borden what is the stock of the Atlantic Coast Line worth today? What was the stock of the Wilmington & Weldon Railroad Co. worth 20 years ago?" "Q. Is not the present value of the original stock of the Wilmington & Weldon Railroad Company, which constituted the basis of the present stock of the Atlantic Coast Line, to-day worth $1,900 or $2,000 in the market?" "Q. What dividends are now being received by the holders of the original stock of the Wilmington & Weldon Railroad Company?" The questions sufficiently disclose the scope of the proposed inquiry, but would doubtless have been followed by other questions eliciting in greater detail the desired information. In its second exception to the order of the commission, the defendant claims the protection of the Constitution of the United States, in the

following words: "The company therefore excepts to the order of the commission in so far as it is construed as requiring it to run an additional train from Rocky Mount to Selma between the hours above named, because to do so would be requiring the company to perform services without compensation to it for the same, and thereby taking its property without due process of law, and in violation of the constitution of this State, and in violation of the Constitution of the United States." In its brief the defendant also says: "Neither the commission nor the legislature has the power to require the defendant to run an additional train at a loss. The jury finds that to operate this train will impose a daily loss of $15 upon the defendant, and to compel the defendant to operate this train at a loss would be taking its property without compensation, and in violation of the constitution of this State and of the Constitution of the United States." In this view of the case, the excluded testimony might become of the utmost importance. We cannot presume that the corporation commission intends "to take the property of the defendant without due process of law," or to require unnecessary services without compensation in some form or another; but we cannot admit that the defendant can ignore the just demands of the public by creating for its own profit and convenience a condition of affairs that makes one train unprofitable by throwing all the remunerative business on trains that do not make connection. The order of the commission does not require the defendant to run an additional train, but simply to make connection. It does not necessarily require any additional, unusual, or special services, but simply the performance of its essential duties in such a manner as will meet the reasonable convenience of the public. This the defendant can do by making a through train arrive at Selma a few minutes earlier; but, if it prefers to ignore the rights of those living along its line, whose lands it has taken through the exercise of the right of eminent domain, in order to cater to its through travel, it cannot justly complain if its public duties require the running of an extra train. The mere fact that through passengers from the North to Florida have the choice of three or more through routes, varying but little in time and comfort, is no excuse for an unjust discrimination against that part of the traveling public who are dependent upon local lines. This idea was evidently in the mind of this court when, speaking by Rodman, J., in Branch v. Railroad, 77 N. C. 347, upon the necessity for the imposition of penalties, it says on page 350: "The legislature considered the common-law liability as insufficient to compel the performance of the public duty. It must have thought that the interest of local shippers, for whose interest principally the road was built, and against whom the company had a complete monopoly, were being sacrificed by wanton delays of carriage in order that the company might obtain the carriage from points where there were competing lines by land or water, as from Wilmington to Augusta." The fact that the defendant in that case was the parent of the present defendant may lend additional significance to the words of the court. In this view the profits of

the road, both for the present and the immediate past, would become material. Suppose the witness had answered that no dividend had had been paid for years, and that the company was unable to earn anything beyond bare expenses, whereby the stock was almost unmarketable; would it not have been competent as tending to prove the defendant's contention that it is unreasonable to demand of it any additional service? On the contrary, suppose the witness had testified as follows: That on one share, of the par value of $100, in the Wilmington & Weldon Railroad Company, the following stock dividends or bonuses had been issued, in addition to large annual dividends: That in 1887 the said railroad company had issued upon this one share of stock, as a bonus, a certificate of indebtedness in the sum of $100, bearing 7 per cent. interest; that in 1900 there were issued, in lieu of this one share of stock, two shares, of $100 each, of preferred stock in the Atlantic Coast Line Company, and two shares, of $100 each, of common stock in the Atlantic Coast Line Company; that in 1897 there was also issued to the holder of the one original share of stock four shares of the Atlantic Coast Line Company of Connecticut, of $100 each; and in 1900 a certificate of indebtedness of the Atlantic Coast Line Company of Connecticut for $400. That all of said stock and certificates of indebtedness were much above par in value, and receiving handsome dividends. That recently a dividend of 25 per cent. had been declared, and that the one original share in the Wilmington & Weldon Railroad Company had thus developed into thirteen shares of stock and certificates of indebtedness, of the par value of $1,300, but of the real value of about $2,500. Suppose it had been further shown that a little over 30 years ago the State's half interest in the Wilmington & Weldon Railroad Company had
338 been bought for $35 a share. Suppose, further, that it was shown that a large part of the alleged indebtedness of the company were certificates of indebtedness issued to the stockholders without any consideration whatever, other than the mere capitalization of profit. Would not this evidence have been competent to prove that the order of the corporation commission, requiring the defendant to quicken its regular train 25 minutes in order to make connection at Selma, was not unreasonable, and not "taking its property without due process of law and in violation of the Constitution of the United States?" Would not such evidence also tend to prove that it would not be unreasonable to require the defendant to make such connection, even if it did require an extra train, at a loss of $15 per day, if other trains running on the same line of road and by the same places more than made up the difference?

There are hypothetical answers on both sides. Where the truth may be was peculiarly within the knowledge of the defendant, upon whose objection it was excluded. It cannot be contended that such an investigation would be an impertinent inquisition into private affairs, as property taken for a public purpose under the

power of eminent domain is indelibly impressed with a public use. This has been too often decided by the Supreme Court of the United States to be any longer an open question. Two cases will be sufficient for my purpose. In Chicago, etc., Railroad Co. v. Wellman, 143 U. S., 339, the court says on page 345: "A single suggestion in this direction: It is agreed that the defendant's operating expenses for 1888 were $2,404,516.54. Of what do these operating expenses consist? Are they made up partially of extravagant salaries—fifty to one hundred thousand dollars to the president, and in like proportion to subordinate officers? Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company, for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this—that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.'"

The corporation commission act (chapter 164, p. 291, Laws 1899), in section 2, provides as follows: "Provided, that in fixing any maximum rate or charge or tariff of rates or charges for any common carrier, person or corporation subject to the provisions of this act, the said commission shall take into consideration if proved or may require proof of the fair value of the property of such carrier, persons or corporation used for the public in the consideration of such rate or charge or the fair value of the service rendered as in determining the fair value of the property so being used for the convenience of the public. It shall furthermore consider the original cost of the construction thereof and the amount expended in permanent improvements thereon and the present compared with the original cost of construction of all its property within the State of North Carolina; the probable earning capacity of such property under the particular rates proposed and the sum required to meet the operating expenses of such carrier, person or corporation and all other facts that will enable them to determine what are reasonable and just rates, charges, and tariffs."

The case of Cotting v. Stockyards Co., 183 U. S. 79, is cited by the defendant, but does not seem to sustain its contentions. In the opinion in that case appears the following clear distinction between those corporations which, like railroad and telegraph companies, are created for a public purpose, and endowed with certain governmental powers, such as that of eminent domain, and those corpora-

tions which are only incidentally devoted to public use, receiving no governmental powers, and not impressed with any permanent public purpose. The court says on page 93: "Now, in the light of these decisions and facts, it is insisted that the same rule as to the limit of judicial interference must apply in cases in which a public service is distinctly intended and rendered, and in those in which, without any intent of public service, the owners have placed their property in such a position that the public has an interest in its use. Obviously there is a difference in the conditions of these cases. In the one, the owner has intentionally devoted his property to the discharge of a public service; in the other he has placed his property in such a position that, willingly or unwillingly, the public has acquired an interest in its use. In the one, he deliberately undertakes to do that which is a proper work for the State; in the other, in pursuit of merely a private gain, he has placed his property in such a position that the public has become interested in its use. In the one, it may be said that he voluntarily accepts all the conditions of public service which attach
339 in like service performed by the State itself; in the other, that he submits to only those necessary inferences and regulations which the public interests require. In the one, he expresses his willingness to do the work of the State, aware that the State in the discharge of its public duties is not guided solely by a question of profit. It may rightfully determine that the particular service is of such importance to the public that it may be conducted at a pecuniary loss, having in view a larger general interest. At any rate it does not perform its services with the single idea of profit. Its thought is the general public welfare. If in such a case an individual is willing to undertake the work of the State, may it not be urged that he in a measure subjects himself to the same rules of action, and if the body which expresses the judgment of the State believe that the particular services should be rendered without process, he is not at liberty to complain? While we have said again and again that one volunteering to do such services cannot be compelled to expose his property to confiscation; that he cannot be compelled to submit its use to such rates as do not pay the expenses of the work, and therefore create a constantly increasing debt, which ultimately works its appropriation—still is there not force in the suggestion that, as the State may do the work without profit, if he voluntarily undertakes to act for the State he must submit to a like determination as to the paramount interests of the public? Again, wherever a purely public use is contemplated, the State may and generally does bestow upon the party intending such use some of its governmental powers. It grants the right of eminent domain, by which property can be taken, and taken not at the price fixed by the owner, but at the market value. It thus enables him to exercise the powers of the State; and exercising those powers and doing the work of the State, is it wholly unfair to rule that he must submit to the same conditions which the State may place upon its own exer-

cise of the same powers and the doing of the same work? It is unnecessary in this case to determine this question. We simply notice the arguments which are claimed to justify a difference in the rule as to property devoted to public uses from that in respect to property used solely for purposes of private gain, and which only
340 by virtue of the conditions of its use becomes such as the public has an interest in. In reference to this latter class of cases, which is alone the subject of the present inquiry, it must be noticed that the individual is not doing the work of the State. He is not using his property in the discharge of a purely public service. He acquires from the State none of its governmental powers. His business in all matters of purchase and sale is subject to the ordinary conditions of the market and the freedom of contract.

341 (Title of Cause.)

Judgment.

This cause came on to be heard upon the transcript of the record from the superior court of Wake county, upon consideration whereof this court is of opinion that there is error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Honorable Walter Clark, chief justice be certified to the said superior court, and that judgment against the defendant be entered in this court as indicated in said opinion, and that judgment of the superior court be reversed. And it is considered and adjudged further that the defendant do pay the costs of the appeal in this court incurred, to-wit, the sum of fifty-three dollars and eighty cents, and let execution issue therefor.

(Title of Cause.)

Judgment.

This cause came on to be heard on the transcript of the record from the superior court of Wake county, upon consideration whereof this court is of opinion that there is error in the ruling of the said superior court, and it is therefore considered and adjudged by the court here that the judgment of said superior court be reversed, and that the order of the corporation commission of February 13, 1904, requiring defendant "The Atlantic Coast Line Railroad Company to furnish transportation to passengers from Rocky Mount to Selma after 12.50 p. m. and by or before 2.25 p. m. each day, and that the Southern Railway Company hold its train No. 135 at Selma 15 minutes, if for any reason the Atlantic Coast Line train, connecting at that point, is delayed," is in all respects valid, and is hereby affirmed. And it is further ordered and adjudged that a *cesat executio*, till February 10, 1905, be entered on the judgment docket of this court, and until that date no mandate shall issue to the defendant upon this judgment.

342 THE N. C. CORPORATION COMMISSION
v.
THE ATLANTIC COAST LINE R. R. CO. } No. —. From Wake.

Petition of the Defendant to Rehear. Filed January 28, 1905, and Delivered to Walker and Hoke, J. J., at Request of Petitioner.

The petitioner, The Atlantic Coast Line Railroad Company, hereby designates Associate Justices Walker and Hoke to whom this petition shall be referred.

To the honorable, the supreme court of North Carolina:

The petition of the defendant respectfully shows to the court that at the fall term, 1904, of this court, upon an appeal by the plaintiff from the court below, this court overruled the judgment and order rendered by the judge in the court below and rendered judgment in favor of the plaintiff, reversing the judgment of the superior court and declaring valid the order of the corporation commission made in this cause February 13, 1904. The said judgment further provided as follows, to-wit:

"That order simply directed the defendant to make the connection daily at Selma at the time therein mentioned, without specifying whether this should be done by quickening the speed of train No. 39, or by extending the run of the Springhope or Plymouth train, or by putting on an extra train from Rocky Mount to Selma, and our judgment leaves to the defendant the same liberty of choice as to the mode in which it shall put into effect the order of the commission."

Your petitioner is advised and believes that the opinion of the court as rendered is erroneous in the respects following:

343 First Assignment of Error.

The opinion holds that the corporation commission had the power under the statute creating it to make the order in question. The counsel for the defendant relied upon subsection 9 of section 1957 of the Code, which gave to railroad companies the right to regulate the time and manner in which passengers shall be transported. The court, in its opinion, held that the act establishing the railroad commission, chapter 320 of the Laws of 1891, having a repealing clause as to all previous legislation in conflict with it, modified the provisions of the Code cited above so as to confer upon the commission the power of regulating the time and manner in which railroad companies should transport passengers and freight. The court did not advert to the fact that the act of 1891, and all the acts amendatory thereof, were repealed in toto by chapter 506 of the acts of 1899. Defendant contends that the effect of this repeal of the

act of 1891 was to re-enact subsection 9, section 1957, of the Code. The corporation commission act, that is, the act of 1899, contains no repealing clause. So that the defendant has the statutory power of regulating the time and manner of the running of its trains given to it in express words, and there is no express limitation or modification of this power contained in the corporation commission act. The court also overlooked chapter 97 of the Laws of 1893, and the effect of the declaration of the legislature contained in that act, taken in connection with section 1957 of the Code. The act of 1893, which was passed after the railroad commission act, and has never been repealed or modified, is a legislative declaration that independent of that statute there was no authority in the commission to compel railroad companies to run even one daily passenger train, stopping at all stations, and also a declaration by the legislature
344 that one passenger train each way a day, stopping at all stations, was sufficient service for the traveling public.

See Nashville, etc., Railroad Co. v. The State, 32 R. R. Cases, New Series, 189.

It must be noted that the act of 1899 carries with it no repealing clause, and therefore can not repeal the Code or the act of 1893.

The petitioner contends that there are only five statutes which can be considered in deciding whether the corporation commission had the power to make the order. Those statutes are as follows:

(1.) The Code, section 1957, subsection 9.

(2.) The railroad commission act of 1891.

(3.) Chapter 97, Public Laws of 1893.

(4.) Chapter 506, Public Laws of 1899.

(5.) Corporation commission act of 1899, chapter 164, Public Laws of 1899.

It will be noted that the last named act, the corporation commission act, contains no repealing clause, and undertakes to establish a system different from the one theretofore existing. It will be further noted that the railroad commission act of 1891 is repealed by chapter 506 of the Laws of 1899. Therefore, in considering these statutes, the railroad commission act and the act repealing the same must be eliminated. If we assume that the railroad commission act of 1891 modified the Code, it will necessarily follow that chapter 506, by repealing the railroad commission act, re-enacted the Code and left it in full vigor. If this be true, the Code 1957, subsection 9, the act of 1893, and the corporation commission act of 1899 are the only statutes to be considered; and we confidently assert that these statutes do not give the corporation commission power to make the order complained of.

345 Even if the corporation commission had the power to compel railroad companies to make close connection, it could only apply to trains already existing. That is, in this case, to the defendant's train No. 39. And the corporation commission, in their

order, a fact which seems to have been overlooked by the court, declared that it was impracticable for No. 39 to make the connection. The act gives them the power to require the connection only when practicable; and the corporation commission having declared that it was impracticable for No. 39 to make this connection, their power in the premises was at an end.

It is shown in the evidence that the defendant could not and would not extend the run of either the Springhope or the Plymouth train, and that it would be compelled to put on an additional train to make this run. And it is further in evidence that to do so it would incur a daily loss of fifteen dollars, and so would be violative of the constitution of this State and of the United States.

Second Assignment of Error.

Your petitioner is advised and alleges as a second assignment of error that the opinion of the court in the said case was erroneous, because the court held that the plaintiff had the power to require defendant to operate a fifth train each way daily, at a daily loss of fifteen dollars, because the defendant's revenues from its other operations were sufficient to enable it to meet said loss and still have a fair profit from its entire operation. Petitioner contends that this requirement is in derogation of the rights and immunities conferred upon the defendant by the constitution of North Carolina and by the Constitution of the United States. Petitioner believes
346 that its immunity from such requirement is distinctly declared by the Supreme Court of the United States in the case of the Chicago, Milwaukee and St. Paul R. R. Co. v. Minnesota, 134 U. S., 485. In this case the Supreme Court of the United States held that the enforcement by the commission of the State of Minnesota of an order requiring the plaintiff to transport milk between certain towns in Minnesota at a slight loss was in violation of the fourteenth amendment to the Constitution of the United States, and herefore void. The loss sustained by this milk train rate applied to only a portion of a small branch of that railroad in the State of Minnesota, and there was no contention that it seriously impaired the earning capacity of the road; but, because it was a requirement upon the railroad to perform a service at a loss, the highest court of the land held it to be void.

A similar point arose in the famous case of Smythe v. Ames, 169 U. S., pages 466–550. In this case the Supreme Court of the United States held that an order of the commission of the State of Nebraska, which established local rates below the cost of the service, was illegal and void as contravening the fourteenth amendment of the Constitution of the United States, even though it were proved and admitted that the railroads affected would, upon their total business, earn enough to pay the cost of service and have some profit. The court held that one service in that case, the through service, could not be

expected to pay its own cost and yield a profit, while the local business was required to be performed at a loss.

The Supreme Court of the United States, in the Railroad Commission Cases, 116 U. S., 331, concisely lays down the doctrine as follows: The State can not require a railroad corporation to carry persons or property without reward." This language is again quoted with approval by that court in the case of Dow v. Beidelman, 125 U. S. 689. These cases are cited with approval by Judge Brewer,
347 when a circuit court judge, in the case of Chicago, St. Paul, etc., R. R. v. Becker and The Minnesota Railroad Commission, in the 35 Federal Reporter, page 883. In that case he enjoined the enforcement of a rate prescribed by the commission for shifting cars, because it appeared that the rate promulgated by the commission entailed a loss on the railroad company of fourteen cents on each car shifted. There was no contention that this loss seriously affected the earning capacity of the railroad or rendered it unable to meet its fixed charges, operating expenses, and the payment of a profit. But, it being a service required by the State to be performed at less than the cost of the service, was a taking of the railroad's property for public purposes without compensation and was a violation of the rights guaranteed to it by the fourteenth amendment to the Constitution.

Your petitioner thinks the court was led into error by relying too confidently upon the case of Munn v. Illinois, 94 U. S., page 113, and upon general statements of a like character contained in other cases. The court seemed inadvertent to the fact that Munn v. Illinois has been so greatly modified by the later cases that Judge Bradley, in filing a dissenting opinion in Chicago, Milwaukee and St. Paul v. Munn., 134 U. S., 485, begins with these words: "This opinion practically overrules Munn v. Illinois."

The court overlooked the fact that the service required of the defendant by this order of the commission is not one affecting the general public, not like making a general rate for passengers throughout the State, or a general rate of freight prevailing throughout the State, but is a peculiar and special service to be enjoyed only by those persons in a limited portion of the State who might desire to take one particular train on the Southern railway, scheduled to leave Selma at 2:25 p. m.

348 The opinion of Justice Brewer in Chicago, etc., Railroad v. Becker, 35 Federal Reporter, 883, is directly in support of the contention of the defendant. This was a bill filed by the railroad company against defendants as the Railroad and Warehouse Commission of Minnesota, to restrain them from putting in force a schedule of rates for switching service in the city of Minneapolis. In this case Judge Brewer used these words: "It is not within the power of a State, directly or indirectly, to put in force a schedule of rates when the rates therein prescribed will not pay the cost of service. In this case the defendant took no testimony, and the complainant's testimony shows that the actual cost of the service, that is, wages of em-

ployees, rent of engines, keeping the track in repair, exceeds per car by fourteen cents the amount allowed in the schedule as compensation. In other words, it cost the plaintiff $1.14 per car to do the work, and the defendants proposed to allow it to charge only $1.00. 'The State can not require a railroad corporation to carry persons or property without reward.'"

Railroad Commission Cases, 116 U. S., 331.

See also Chicago and N. W. R. R. v. Dey *et al.*, 35 Federal Reporter, 866.

Third Assignment of Error.

Your petitioner is advised and alleges that the court committed error in its findings of fact in several important particulars. Among those errors, petitioner calls attention to the following:

(*a.*) In the statement of facts which precedes the opinion, the court alludes to the fact that before the break in connection at Selma twelve passengers daily were transferred from the Coast Line to the Southern, while, as soon as the break, the average was only
349 two. The court says: "This shows 3,650 passengers annually inconvenienced by the failure to connect at that point. There is evidence elsewhere in the record that it was a very much larger number." The error in this statement is the fact that the court overlooks all the evidence which went to show, and conclusively prove, that the route by way of Weldon was just as convenient and just as cheap as the route by Selma to most of the people living along the Coast Line in northeastern North Carolina, and we think that the court was not justified in holding that all the passengers who chose the northern route instead of the southern route were inconvenienced, but rather the contrary.

(*b.*) The court further overlooked the point made by defendant that the statute does not give the commission power to require one or two connecting lines to make close connection, but the power is given to them to require both lines to make connection, and in this case the order only proceeds against one of the two connecting lines, that is, the defendant.

(*c.*) Again, train No. 39 of the defendant was the train which had been connecting with the Southern at Selma between 2 and 3 o'clock p. m. The court seems to have overlooked the fact that the commission declared it to be impracticable for this train to make this connection, and petitioner is advised and believes that when the commission decided that it was impracticable for defendant's train No. 39 to make this collection, then the power of the commission was at an end and it had no authority to make the order in question.

Your petitioner further represents and alleges that it has paid the costs adjudged against it in the supreme court.

Wherefore, the petitioner prays:

(1.) For a re-hearing of this cause, and that the judgment
350 and order of this court re-dered at fall term, 1904, be reversed, and judgment entered sustaining the judgment of the court below.

(2.) That this cause be re-opened for argument under rule 33 and a re-hearing had as to all points presented in the record in case on appeal.

(3.) For a re-hearing as to all points mentioned and stated in this petition and in the certificate of counsel hereto attached.

Respectfully submitted,

THE ATLANTIC COAST LINE R. R. CO.,
By JUNIUS DAVIS,
POU & FULLER, Attorneys.

Certificate of Counsel.

In the Supreme Court.

THE NORTH CAROLINA CORPORATION COMMISSION, Plaintiff,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

To the honorable the supreme court of North Carolina:

I, James E. Shepherd, do hereby certify that I have no interest in the subject-matter involved in the above-entitled action, and am not now, and never have been, of counsel for either party to this suit; and that I have been for more than five years a member of the bar of this court. That I have carefully examined the record in the case of the The North Carolina Corporation Commission v. The Atlantic Coast Line Railroad Company, and the law bearing thereon. I have examined the authorities cited in the opinion of this court, rendered at its fall term, 1904, and I have read the briefs filed on both sides, and I am of the opinion that the decision rendered by this court at said term is erroneous. I am of the opinion that the
351 judgment of the court below ought to have been affirmed.

In my opinion, the judgment of this court rendered at fall term, 1904, was erroneous in the following respects:

According to the issues, a new and additional train must be put on by the defendant company in order to make the desired connection. The order of the commission, which is affirmed by this court, substantially requires this to be done. Such an extraordinary power should, in my opinion, be very clearly expressed by the legislature. I do not with great respect for the court, so find it in any of the laws of this State, and I therefore think it has not been conferred upon the commission.

(Signed) JAS. E. SHEPHERD.

Certificate of Counsel.

In the Supreme Court.

THE NORTH CAROLINA CORPORATION COMMISSION, Plaintiff,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

To the honorable the supreme court of North Carolina:

I, Frank I. Osborne, do hereby certify that I have no interest in the subject-matter involved in the above-entitled action, and am not now, and never have been of counsel for either party to this suit; and that I have been for more than five years a member of the bar of this court; that I have carefully examined the record in the case of The North Carolina Corporation Commission v. The Atlantic Coast Line Railroad Company, and the law bearing thereon. I have examined the authorities cited in the opinion of this court, rendered at its fall term, 1904, and I have read the briefs filed on both sides, and I am of the opinion that the decision rendered by this court at the said term is erroneous. I am of the opinion
352 that the judgment of the court below ought to have been affirmed. In my opinion, the judgment of this court rendered at fall term, 1904, was erroneous in the following respects:

1. According to the issues, a new and additional train must be put on by the defendant company in order to make the desired connection. The order of the commission, which is affirmed by this court, substantially requires this to be done. Such an extraordinary power should, in my opinion, be very clearly expressed by the legislature. I do not, with great respect for the court, so find it in any of the laws of this State. I think the statute law governing this case will be found in the Code, sec. 1957, sub-sec. 9, chap. 98 of the Public Laws of '93, and the corporation commission act of 1899, chap. 164 of the Public Laws of '99. I think chapter 506 of the Public Laws of '99 repealed the railroad commission act of 1891, thereby re-establishing the Code. I find no repealing clause in the corporation commission act of '99, chap. 164 of the Public Laws of '99. The only repeal that exists therein is by implication. Whatsoever is in the Code that is not absolutely inconsistent with chapter 164 of the Public Laws of '99 still subsists. The Code, sec. 1957, subsection 9, and chap. 97 of the Public Laws of 1893 are not inconsistent with the corporation commission act of 1899, chap. 164 of the Public Laws of '99. These three statutes should, therefore, be construed together. Construing them together, I can find no authority for the order made by the commission in this case and the judgment of the supreme court affirming said order. Besides, sec. 21, which is the authority quoted in the opinion for the authority exercised by the commission, does not expressly give such authority. Before such

extraordinary power can be exercised, my opinion is that the authority ought to be expressed.

2. Conceding that sec. 21 confers the authority exercised by the commission to order the close connection at Selma, between the passenger train of the Atlantic Coast Line and the Southern railway, it appears that such connection did subsist for over ten years; that such connection was not broken by the default of the Atlantic Coast Line Railroad Company, but by the action of the Southern Railway Company; that the default, if any, was that of the Southern Railway Company; if the corporation commission has the power, approved by the court, of ordering the close connection of these connecting lines and that the connection has been broken unnecessarily by the Southern railway, as appears to me from the evidence, it is an unjust and, therefore, unreasonable order which requires the Atlantic Coast Line railroad to re-establish a connection which it did not break. This is a discrimination, in my mind, against the Atlantic Coast Line railroad in favor of the Southern Railway Company.

(Signed) FRANK I. OSBORNE.

[Endorsed:] We do not think this is a proper case to be reheard Feb. 10, 1905. P. D. Walker, W. A. Hoke, justices of supreme court

353 Supreme Court of North Carolina.

I, Thomas S. Kenan, clerk of the supreme court of North Carolina do hereby certify that the foregoing is a true, full and correct copy of the record in the case of the North Carolina Corporation Commission against The Atlantic Coast Line Railroad Company, as appears from the files of this court.

Given under my hand and seal of said court at Raleigh on this the 21st day of February, 1905.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk of the Supreme Court N. C.

Endorsed on cover: File No. 19,645. North Carolina Supreme Court. Term No. 186. The Atlantic Coast Line Railroad Company, plaintiff in error, vs. The North Carolina Corporation Commission. Filed March 6th, 1905. File No. 19,645.

FILE COPY.

No. 15 OCTOBER TERM, 1905.

FILED
JAN 22 1906
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States

The Atlantic Coast Line Railroad Company,
Plaintiff in Error,

vs.

The North Carolina Corporation Commission.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN G. JOHNSON,
WARREN G. ELLIOTT,
FRANK P. PRICHARD,
For Plaintiff in Error

(19645)

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1905. No. 186.

The Atlantic Coast Line Railroad Company, Plaintiff in Error,

vs.

The North Carolina Corporation Commission.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was originally a proceeding in the Superior Court of Wake County, North Carolina, on an appeal by the Atlantic Coast Line Railroad Company from an order made by the North Carolina Corporation Commission. The Superior Court reversed the order. On appeal by the Commission to the Supreme Court of North Carolina the judgment of the Superior Court was reversed and the order of the Commission was sustained and enforced. Thereupon the Atlantic Coast Line Railroad Company took

the present writ of error on the ground which was raised in the court below (Record, page 265), that the order was in violation of the Constitution of the United States.

The facts are as follows:

The Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, authorized by the laws of the State of North Carolina to carry on business in that State, operates, in North Carolina, a railroad, over which it transports freight and passengers on through routes between other States, and between local points in the State of North Carolina. Its line is crossed by the line of the Southern Railway Company, at a point called Selma. (See diagram between pages 38 and 39 of the Record.)

For about ten years prior to the controversy in question, the Atlantic Coast Line Railroad Company had arranged and maintained its schedules, so that the scheduled time of arrival of a through train, No. 39, at Selma, was prior to the arrival at that point of train No. 135 of the Southern Railway Company, thus allowing passengers to make connection. Another train of the Atlantic Coast Line Railroad Company made connection further east with a train of the Southern Railway Company at a point called Goldsboro. (Record, page 98.)

On October 3d, 1903, the Southern Railway Company addressed a letter to the North Carolina Corporation Commission (Record, page 10), stating that it was their intention to change their running schedule, by advancing the time of arrival of train 135 at Selma thirty-five minutes, leaving Selma at 2.25 instead of at 3 P. M. This would break the connection with the Atlantic Coast Line Railroad Company's train No. 39, which arrived at Selma at 2.50.

In consequence of this communication, the North Carolina Corporation Commission requested the Atlantic Coast Line Railroad Company to change its schedule to agree with that of the Southern Railway Company, and to make its train No. 39 connect with train No. 135 of the Southern

Railway Company, leaving Selma at 2.25 under the new schedule.

The Atlantic Coast Line Railroad Company thereupon took up the matter with the other roads in the North over which its through train No. 39 passed, and made strenuous efforts to arrange a new schedule, but found it wholly impracticable. The correspondence between the Commission and the Atlantic Coast Line Railroad Company is to be found on pages 11 to 16 of the Record.

The North Carolina Corporation Commission thereupon made an order, requiring the Atlantic Coast Line Railroad Company to rearrange its schedule, so as to advance the arrival of its train No. 39 at Selma to correspond with the change of schedule of the Southern Railway Company (Record, page 17); but, upon the protest of the Atlantic Coast Railroad Company, (Record, page 19), suspended the order (Record, page 27) and gave a hearing to the parties. The result of that hearing was a finding and order of the Commission (Record, page 28), whereby the Commission found that it was impracticable for the Atlantic Coast Line Railroad Company to adopt a schedule under which its train 39 could arrive at Selma in time to connect with the train of the Southern Railway Company under the latter's new schedule. The Commission, however, found that the convenience of the traveling public required that the Atlantic Coast Line Railroad Company should furnish transportation to passengers who might wish to connect with the Southern Railway Company's train at Selma, and therefore ordered that the Atlantic Coast Line Railroad Company should furnish such transportation, either by extending the run of certain local branch trains forty-two miles farther, along the main line to Selma, or else by providing an entirely new and additional train for the service. (Record, page 30.) Exceptions filed to this order were dismissed by the Commission. (Record, page 77.) The Atlantic Coast Line Railroad Company appealed to the Superior Court of the State of North Carolina. Upon the trial, the evidence showed that the Atlantic Coast Line Railroad Company ran four trains a day to Selma (Record,

page 248), and that there was not any single point on its entire line at which it did not have two trains carrying passengers each way (Record, page 187), this being twice the number required by law; that there was no complaint that its line did not run an ample number of trains to accommodate all travel for points on its own line, or that it had not arranged its schedules to most conveniently serve the purposes of the general travel on those lines, having regard to all of its connections. (Record, pages 97-102.) It appeared, however, that persons residing in a territory around Tarboro, Nashville and Wilson, and other points on certain branch lines of the Atlantic Coast Line Railroad, (Record, pages 80-180) who wished to travel by and to reach certain points on, the Southern Railway Company's lines, were inconvenienced by being unable, owing to the Southern Railway Company's change of schedule, to make connection at Selma with train 135 on the Southern Railway, which left there at 2.25 P. M. It also appeared that the Atlantic Coast Line Railroad Company had, at Rocky Mount, on its main line, two local branches, one to Spring Hope and one to Plymouth, over which it ran trains (see diagram, page 38), but that it was impracticable for various causes to extend the run of these local trains forty-two miles over the main line to Selma. It also appeared that if a special train were to run between Rocky Mount and Selma, in order to connect with the train on the Southern Railway according to the new schedule of that road, it would have to be run at a loss to the Atlantic Coast Line Railroad Company. It also appeared from the evidence that the general business of the company in North Carolina was profitable. (Record, page 153.)

The following special findings were made by the jury (Record, page 85):—

> "1. Is it practicable for train No. 39 of the At-"lantic Coast Line Railroad, due to arrive at Selma "at 2.50 P. M., to make connection at Selma with "train No. 135, westbound, of the Southern Railway, "due to leave Selma at 2.25 P. M.?
>
> "Answer: No.
>
> "2. Is it practicable to make said connection by

"extending the run of the Plymouth train daily "from Plymouth to Selma and return, and if so, "what would be the additional expense?

"Answer: No.

"3. Is it practicable to make said connection by "the use of the Spring Hope train, and if so, what "would be the additional expense?

"Answer: No.

"4. In order to make such connection would de- "fendant company have to run an additional train "on its main line from Rocky Mount to Selma?

"Answer: Yes.

"5. Is it practicable for said train to safely run the "schedule prescribed in plaintiff's order, having due "regard to the number of trains and number of stops, "on defendant's main line from Rocky Mount to "Selma?

"Answer: Yes.

"6. What would be the daily cost of operating "such train from Rocky Mount to Selma and return?

Answer: Forty dollars.

"7. What would be the probable daily receipts "from such train?

"Answer: Twenty-five dollars.

"8. Is it reasonable and proper that, for conveni- "ence of the traveling public, the defendant company "should be required to make such connection?

"Answer: Yes.

Upon these findings the Superior Court entered judgment for the Atlantic Coast Line Railroad Company, and reversed the order of the Commission. (Record, page 86.)

The Commission thereupon appealed to the Supreme Court of North Carolina, which court reversed the judgment of the Superior Court and entered judgment affirming and enforcing the order of the Commission. (Record, page 260.)

From this judgment of the Supreme Court of the State of North Carolina, the Atlantic Coast Line Railroad Company takes the present writ of error.

The statutes of North Carolina bearing upon the subject

of the controversy and referred to by the parties or by the court were as follows:—

Code of North Carolina, section 1957, sub-section 9, originally enacted in 1871-72, incorporated into the Code of 1883, and since the decision of this case incorporated into chapter 61 of the revision of 1905, section 2567, sub-section 9; section 2614:—

"Every railroad corporation shall have power:

* * * * * * *

"9. Regulation of time and manner of transportation.

"To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor; and such compensation for any passenger and his ordinary baggage shall not exceed five cents per mile."

An Act to amend chapter 49 of the Code, ratified February 9th, 1893 (P. L., 84):—

"SECTION 1. That the Board of Railroad Commissioners of North Carolina are hereby empowered, whenever it shall appear wise and proper so to do, to authorize, allow and permit any railroad company operating in this State to run one or more fast mail trains over its road which shall only stop at such stations on the line of the road as may be designated by the company: *Provided*, that in addition to such fast mail train said railroad shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: *Provided*, nothing in this Act shall be construed to authorize any company, persons or corporations to run any trains over the Petersburg Railroad between Weldon and the State Line after the expiration of the extension of the charter granted to that company by this State in one thousand eight hundred and ninety-one, unless and until the charter of said Petersburg Railroad

"shall be renewed by this General Assembly: *Pro-*
"*vided, further,* that nothing in this Act shall be con-
"strued as preventing the running of local passenger
"trains on Sunday.

"SEC. 2. That this Act shall be in force from
"and after its ratification."

An Act to establish the North Carolina Corporation Commission (ratified March 6th, 1899, P. L. 291):—

"SEC. 1. That there shall be elected by this General Assembly three Commissioners, who shall have gen-
"eral supervision of railroads, steamboat naviga-
"tion and canal companies, express and telegraph
"and telephone companies, building and loan asso-
"ciations, banks and sleeping car companies.

* * * * * * *

"They shall have such general control and super-
"vision of all railroad, steamboat, canal, express
"and sleeping car companies or corporations and
"of all other companies or corporations engaged in
"the carrying of freight or passengers; of all tele-
"graph and telephone companies, of all public and
"private banks; and all loan and trust companies
"or corporations and of all building and loan asso-
"ciations or companies necessary to carry into effect
"the provisions of the Act.

* * * * * * *

"SEC. 21. All common carriers subject to the pro-
"visions of this Act shall according to their powers
"afford all reasonable, proper and equal facilities for
"the interchange of traffic between their respective
"lines and for the forwarding and delivering of pas-
"sengers and freights to and from their several lines
"and those connecting therewith, and shall not dis-
"criminate in their rates and charges against such
"connecting lines, and connecting lines shall be re-
"quired to make as close connection as practicable
"for the convenience of the travelling public. And
"said common carriers shall obey all rules and regu-

"lations made by said commission relating to track-
"age. Any violation of the provisions of this section
"shall be punished by a fine of not less than five
"hundred dollars or exceeding five thousand dollars
"for each and every offense."

SPECIFICATIONS OF ERROR.

First—That the said Supreme Court of North Carolina erred in holding and adjudging that under section 21 chapter 164, of the Public Laws of 1899, the plaintiff had the right to require the defendant to run a passenger train between the town of Rocky Mount and the town of Selma, in said State, leaving Rocky Mount after 12.50 P. M. and arriving at Selma at or before 2.25 P. M. each day.

Second.—That the said court erred in holding and adjudging that under said section 21 of chapter 164, Public Laws of 1899, the said plaintiff had the right to require the defendant to run a passenger train leaving Rocky Mount after 12.50 P. M. and reaching Selma at or before 2.25 P. M., when, to obey said order, necessitated the operation by defendant between said stations of another train in addition to the four trains each way every day carrying passengers in operation by defendant between said stations.

Third.—That the said court erred in holding and adjudging that the plaintiff had the power to require of the defendant the putting on of an additional train for the sole purpose of conveniencing passengers who desired to travel on the Southern Railway from Selma westward, when it appeared that the defendant was already furnishing transportation between Rocky Mount and the Southern Railway by seven passenger trains each way daily, three of which seven passenger trains made close connection every day with west-bound trains of the Southern Railway at Goldsboro and Selma.

Fourth.—That the said court erred in holding and adjudging that the plaintiff had the power and right to require the defendant to operate an additional train for the convenience of passengers desiring to travel on the Southern Railway from Selma westward, when it appeared that the trains of the defendant had for about ten years been scheduled to reach Selma at 2.50 P. M., which was prior to the leaving time of the Southern Railway's west-bound train from Selma, and when it appeared that shortly before the making of the said order by the plaintiff the said Southern Railway Company had advanced the time for its said train to leave Selma from 3 o'clock P. M., to 2.35 o'clock P. M., and when it further appeared, and was so found as a fact by the North Carolina Corporation Commission, that the defendant could not so increase the schedule of its trains then running between Rocky Mount and Selma that they could reach Selma by the time the Southern Railway train would leave under its new schedule, and that such connection could only be afforded by the placing upon said road of additional service by defendant.

Fifth.—That the said court erred in holding and adjudging that the plaintiff had the right and power to require the defendant to operate an additional train between Rocky Mount and the Southern Railway every day at a net loss of fifteen dollars per day, for the sole convenience of passengers desiring to travel on the trains of the Southern Railway from Selma westward, when the defendant was already furnishing transportation for passengers between Rocky Mount and the junction points of the Southern Railway by seven trains each way daily, three of which made close connection with west-bound trains of the Southern Railway, and when defendant was maintaining with regard to the Southern Railway practically the same schedule which had been in force for ten years prior to the making of said order, the Southern Railway, shortly before the making of said order, having advanced the time for the departure of its train from Selma by thirty-five minutes. That in holding

and adjudging that the plaintiff had the power to make such order, and in adjudging and decreeing that the said order of the plaintiff should be enforced by the defendant from and after the tenth day of February, 1905, notwithstanding the loss incurred as aforesaid, the said court denied to the defendant and its property the equal protection of law and deprived it of its property without due process of law, contrary to the Constitution of the United States and the amendments thereto. That the effect of such judgment and decree of the said court, if carried into effect would be to abridge the defendant of its rights, privileges and immunities guaranteed to it as a citizen of the United States by the Constitution of the United States and the amendments thereto, and would deprive it of its property without compensation and without due process of law, and would deny to it the equal protection of the law.

Sixth.—That the said court erred in holding and adjudging that, notwithstanding there was no allegation that the defendant had failed to provide all necessary, proper and adequate service for the transportation of passengers over its own lines, the plaintiff had the right and power to require it to operate over a portion of its said lines, to wit, between Rocky Mount and Selma, an additional train, at a daily net loss of fifteen dollars, solely for the convenience and benefit of persons desiring to travel on trains of the Southern Railway westward from Selma. That such judgment and decree, putting in force the said order of the plaintiffs from and after the tenth day of February, 1905, deprived defendant of its property without due process of law, would deny to it the equal protection of the law, would abridge defendant's rights and immunities as a citizen of the United States, guaranteed to it by the Constitution and laws of the United States, and would be in violation of the Fourteenth Amendment to the Constitution of the United States.

Seventh.—That the said court erred in holding and adjudging that, notwithstanding it is a fact that no allega-

tion or complaint has been made that the defendant is failing to furnish ample and sufficient accommodation over its line between Rocky Mount and Selma by means of four trains carrying passengers each way every day, upon schedules adapted to the requirements of defendant's business and the convenience of its passengers, the plaintiff had the right and power to require it to operate a fifth train each way every day between said points for the sole convenience of passengers wishing to travel on trains of the Southern Railway from Selma westward. That such judgment and decree, putting in effect the plaintiff's said order from and after the tenth day of February, 1905, was a denial to defendant of the equal protection of the law and an abridgment of the rights and immunities guaranteed to it as a citizen of the United States by the Constitution and laws of the United States, and deprived defendant of its property without compensation and without due process of law, and in violation of the Constitution and laws of the United States .

Eighth.—That the said court erred in holding and adjudging that the order of the plaintiff requiring the defendant to operate an additional train when there was no allegation of insufficiency of service over its own line, and at a loss, and solely for the convenience of passengers desiring to travel over another railroad, was not in violation of the Constitution of the United States.

Ninth.—That the said court erred in holding and adjudging that, although defendant was giving adequate and necessary service over its own lines, it could be required to put on additional service and operate the same at a loss, solely for the convenience of passengers desiring to travel on another railroad, for and because of the fact that defendant's earnings from its operation was sufficient to enable it to run the said additional train at a loss and still pay operating expenses and some profit.

Tenth.—That the said court erred in holding and adjudging that the decision rendered by the judge of the

Superior Court of Wake County in this cause, and set out in the record, was erroneous, and in reversing the same, whereas the said court should have affirmed the said decision of the judge of the Superior Court of Wake County.

ARGUMENT.

Reduced to its simplest terms the question in the present case is:—

Can the State require a railroad company to run a special daily train at a loss for the convenience of a limited number of passengers who wish to make close connection with a particular train on a crossing road, it appearing that it is already running sufficient trains to accommodate the general travel on its lines and has arranged its schedules to best accommodate general travel and connect with all connecting roads, and that its failure to connect with such particular train was due to a change of schedule on the crossing road to which it was impracticable to conform by any change in the schedule of the train which had made the connection under the original schedule?

So far as they can be stated in general terms, the power of the State to regulate railroads and the constitutional limitations upon the exercise of such power are well established. In the case of

Wisconsin, &c., R. R. Co. *vs.* Jacobson, 179 U. S., 287,

this court, speaking by Mr. Justice Peckham, said:—

> "Railroads have from the very outset been re-
> "garded as public highways, and the right and the
> "duty of the Government to regulate in a reason-
> "able and proper manner the conduct and business
> "of railroad corporations have been founded upon

"that fact. Constituting public highways of a most "important character, the function of proper regula- "tion by the Government springs from the fact that "in relation to all highways the duty of regulation is "governmental in its nature. At the present day "there is no denial of these propositions."

* * * * * * *

"While this power of regulation exists it is also "to be remembered that the legislature cannot under "the guise of regulation interfere with the proper "conduct of the business of the railroad corpora- "tion in matters which do not fairly belong to the "domain of reasonable regulation. Lake Shore, &c., "Railway Company *vs.* Smith, 173 U. S., 684. The "only question arising as each case comes up for de- "cision is whether, in the particular case, the power "has been duly exercised."

In determining whether the power has been duly exercised in the present case, some previous decisions of this court as to what are unreasonable regulations may aid.

In the case of

Smyth *vs.* Ames, 169 U. S., 466-526,

it was said, Mr. Justice Harlan delivering the opinion:—

"A State enactment or regulations made under "the authority of a State enactment establishing "rates for the transportation of persons or property "by railroad that will not admit of the carrier earn- "ing such compensation as under all the circum- "stances is just to it and to the public, would deprive "such carrier of its property without due process of "law and deny to it the equal protection of the laws, "and would therefore be repugnant to the Fourteenth "Amendment of the Constitution of the United "States."

While it was held in the case of

St. Louis & San. Fran. R. W. *vs.* Gill, 156 U. S., 649,

that in a suit by a traveler to recover for charging him more than the legal mileage rate it was no defense to show that on the particular portion of the road traversed by the passenger the expense of transporting him was greater than the mileage rate, it was also held in the case of

Chicago, Mil. & St. P. R. W. *vs.* Tompkins, 176 U. S., 167,—

that it was error to base a judgment as to reasonableness of local rates upon the comparison of gross receipts and expenses of the entire business.

In

Cotting *vs.* Kansas City Stock Yards Co., 183 U. S., 79,

a case which did not involve the regulation of a railroad, but which did involve an attempted regulation of stock yards corporations, it was held that a statute which in effect applied to one corporation only and not to others in like business was unreasonable. This court, (Mr. Justice Brewer delivering the opinion), quoted with approval the words of Judge Catron, as follows:—

> "Every partial or private law which directly pro-
> "poses to destroy or affect individual rights or does
> "the same thing by affording remedies leading to
> "similar consequences, is unconstitutional and void."

In the case of

Lake Shore & Michigan Southern R. W. *vs.* Smith, 173 U. S., 684.

a statute of Michigan providing that one-thousand-mile tickets should be kept for sale at the principal ticket offices of railroads, upon certain terms and conditions was held an "illegal and unjustifiable interference with the rights of "the company." This court (Mr. Justice Peckham delivering the opinion) said:—

> "A railroad company, although a *quasi* public cor-
> "poration, and although it operates a public highway

"Cherokee Nation *vs.* Southern Kansas Railway, "135 U. S., 641; Lake Shore, &c., Railway *vs.* Ohio, "173 U. S., 285, 301), has nevertheless rights which "the legislature cannot take away without a viola- "tion of the Federal Constitution, as stated in Smyth "*vs.* Ames., 169 U. S., 466, 544. A corporation is a "person within the protection of the Fourteenth "Amendment. Minneapolis & St. Louis Railway *vs.* "Beckwith, 129 U. S., 26; Smyth *vs.* Ames, 169 U. S., "466, 522, 526. Although it is under governmental "control, that control must be exercised with due "regard to constitutional guarantees for the protec- "tion of its property.

* * * * * * *

"We cannot regard this exceptional legislation as "the exercise of a lesser right which is included in "the greater one to fix by statute maximum rates "for railroad companies. The latter is a power to "make a general rule applicable in all cases and "without discrimination in favor of or against any "individual. It is the power to declare a general law "upon the subject of rates beyond which the com- "pany cannot go, but within which it is at liberty to "conduct its work in such a manner as may seem to "it best suited for its prosperity and success. This "is a very different power from that exercised in the "passage of this statute. The Act is not a general "law upon the subject of rates, establishing maxi- "mum rates which the company can in no case vio- "late. The legislature having established such maxi- "mum as a general law, now assumes to interfere with "the management of the company while conducting "its affairs pursuant to and obeying the statute regu- "lating rates and charges, and notwithstanding such "rates it assumes to provide for a discrimination, an "exception in favor of those who may desire and are "able to purchase tickets at what might be called "wholesale rates—a discrimination which operates "in favor of the wholesale buyer, leaving the others "subject to the general rule. And it assumes to "regulate the time in which the tickets purchased "shall be valid and to lengthen it to double the period

"the railroad company has ever before provided. It "thus invades the general right of a company to con- "duct and manage its own affairs, and compels it to "give the use of its property for less than the gen- "eral rate to those who come within the provisions "of the statute, and to that extent it would seem that "the statute takes the property of the company with- "out due process of law. We speak of the general "right of the company to conduct and manage its "own affairs; but at the same time it is to be under- "stood that the company is subject to the unques- "tioned jurisdiction of the legislature in the exercise "of its power to provide for the safety, the health "and the convenience of the public, and to prevent "improper exactions or extortionate charges from "being made by the company.

"It is stated upon the part of the defendant in "error that the Act is a mere regulation of the pub- "lic business, which the legislature has a right to "regulate, and its apparent object is to promote "the convenience of persons having occasion to "travel on railroads and to reduce for them "the cost of transportation; that its benefit to "the public who are compelled to patronize rail- "roads is unquestioned; that it brings the reduction "of rates of two cents per mile within the reach of all "persons who may have occasion to make only infre- "quent trips; and that there is no reason why the "legislature may not fix the period of time within "which the holder of the ticket shall be compelled to "use it. The reduction of rates in favor of those pur- "chasing this kind of ticket is thus justified by the "reasons stated.

"The right to claim from the company transporta- "tion at reduced rates by purchasing a certain "amount of tickets is classed as a convenience. As "so defined it would be more convenient if the right "could be claimed without any compensation what- "ever. But such a right is not a convenience at all "within the meaning of the terms as used in relation "to the subject of furnishing conveniences to the "public. And also the convenience which the legis-

"lature is to protect is not the convenience of a small "portion only of the persons who may travel on the "road, while refusing such alleged convenience to all "others, nor is the right to obtain tickets for less "than the general and otherwise lawful rate to be "properly described as a convenience: If that were "true, the granting of the right to some portion of "the public to ride free on all trains and at all times "might be so described. What is covered by the "word 'convenience' it might be difficult to define "for all cases, but we think it does not cover this "case. An opportunity to purchase a thousand-mile "ticket for less than the standard rate we think is "improperly described as a convenience.

* * * * * * *

"Regulations for maximum rates for present trans- "portation of persons or property bear no resem- "blance to those which assume to provide for the "purchase of tickets in quantities at a lower than the "general rate, and to provide that they shall be good "for years to come. This is not fixing maximum "rates, nor is it proper regulation. It is an illegal "and unjustifiable interference with the rights of the "company.

* * * * * * *

"To say that the legislature has power to abso- "lutely repeal the charter of the company and thus "to terminate its legal existence does not answer the "objection that this particular exercise of legislative "power is neither necessary nor appropriate to carry "into execution any valid power of the State over "the conduct of the business of its creature. To "terminate the charter and thus end the legal life of "the company does not take away its property, but, "on the contrary, leaves it all to the shareholders of "the company after the payment of its debts."

With the aid of the principles and the illustrations furnished by these authorities the question of the validity of the order made in the present case will now be considered.

In the first place, it will be observed that the order complained of was not an exercise of the police power of the State. It was not made to protect the health, the morals, or the safety, of the citizens. It was the exercise of a governmental power to regulate, for public convenience, the facilities afforded to the public by a corporation. This distinction is important, because the interference of the State even with what Mr. Justice Brown in Minneapolis & St. L. R. R. *vs.* Minnesota, 186 U. S. 257, calls the "internal economy" of a railroad, may be justified where it is exercised for the public safety, just as a similar interference with the business of a private individual may be justified on the same grounds. An order which is reasonable, when necessary for the protection of the lives or health of the public, may be very unreasonable if made simply for public convenience.

In the second place, the order in the present case was a very unusual one.

None of the authorities cited by the court, or counsel in the court below, show any attempt by a State legislature, or a Commission, to increase the number of trains on a railroad. The nearest approach to one which the industry of counsel and court could find there, was the case of,

People *vs.* St. L. A. & T. H. R. R. Co., 176 Ill., 512,

cited in its opinion by the Supreme Court of North Carolina. (Record, page 269.) That, however, was not the case of an order to run an additional train. On the contrary, it was a petition for a *mandamus* to compel a railroad to perform a specific duty, to wit, to run a passenger train on its road. The railroad ran a freight train, to which was attached a passenger car. The case turned upon the question whether this could be properly termed a passenger train, and the court held that it could not; that the railroad was therefore not operating its road as a passenger road, and that a *mandamus* would lie to enforce this specific duty. In its opinion, the court quotes, without disapproval, the following passage from

a former decision (Ohio & Miss. R. W. *vs.* People, 120 Ill., 200):—

> "It is believed, however, no case can be found "which in the absence of statutory requirements "has gone to the length of holding that a railway "company may be compelled by *mandamus* to in- "crease the number of trains on its road or to run "daily a particular number of trains over its road, "and we are satisfied there is no common-law au- "thority for making such an order."

There may, it is true, be general regulations prescribing a minimum number of daily trains. An example of such legislation is found in

Lake Shore & Mich South. R. R., *v.* Ohio, 173 U. S., 285;

but it is believed that the cases show no attempted exercise by any State, or Commission, of a power to order a particular railroad to put on an additional train between certain points for the sake of affording additional convenience of transportation. Such a power would, it is submitted, partake more of the nature of an operation of such particular road than of a general regulation of all roads for the public convenience.

In the third place the order was not a uniform regulation of railroads, but was a direct interference with the business of a particular road.

It may be said that the North Carolina statute under which the Commission made its order, prescribed a general regulation that all connecting lines should be required to make as close connection as practicable for the convenience of the traveling public. Had the Supreme Court of North Carolina interpreted this to mean that every road in making up its schedules should, so far as practicable, having regard to its entire business in the State and all connections with other roads, arrange its schedules to make as close connections as practicable, it might, with some show of justice, be said, that this would have been a reasonable regulation of

all roads, and that if a road in making up its schedules, arbitrarily and wantonly disregarded such connections, it might be held liable. The Supreme Court of North Carolina, however, has so interpreted this statute that under it a road which has properly made up its schedules—schedules which it is not practicable to change with justice to all its patrons—may nevertheless be compelled to run an additional train at a loss to meet a change made by one of the connecting roads. This places it in the power of the Commission to compel any road to run extra trains to meet changes in the schedule of any crossing or connecting road, and so far from being an equal regulation binding on all, is a discrimination in favor of one road, at the expense of the other.

The practical effect of such power is shown in the present case. The Southern Railway Company changed its schedule and thus broke a schedule connection which had been maintained by the Atlantic Coast Line Railroad for ten years. Naturally, if an extra train was to be run to correct this, the Southern Railway should be required to run it. Yet the Commission compelled the Atlantic Coast Line Railroad, not the Southern Railway Company, to run the extra train.

The North Carolina statute, although in form a general regulation of railroads, has been so interpreted that the remedy under it may be the shifting upon one road of a burden caused by a change of schedule of the other. To refer to the quotation in Cotting *vs.* Kansas City Stock Yards Co., 183, U. S., 79, already cited, a law may be "partial if it destroys or affects individual rights or by "affording remedies leading to similar consequences."

In the fourth place, the order compelled the railroad to run an additional train at a pecuniary loss.

The effect of the order was practically the same as if the legislature or the Commission had said to the railroad, "You are supplying enough trains to meet the gen-"eral requirements of public traffic, and you have arranged "your schedules in the best manner practicable. For the

"convenience of passengers coming from certain points on "your branch lines, who wish to take a certain train on a con- "necting road, we will take possession of your road and run "an additional train to meet such connecting train and charge "you with the loss." What is this but the appropriation of property without compensation? There can be no just distinction between taking possession of and using a company's property at its expense and forcing the company to use the property for the benefit of the public at a loss to itself. On this point the language of this court through Mr. Justice Brewer in

Chicago, Mil., &c., R. W. *vs.* Tompkins, 176 U. S., 167-173, is applicable:—

> "It is within the competency of the legislature to "determine when and what property shall be taken "for public uses. That question is one of policy "over which the courts have no supervision; but if "after determining that certain property shall be "taken for public uses the legislature proceeds fur- "ther and declares that only a certain price shall be "paid for it, then the owner may challenge the "validity of that part of the Act, may contend that "his property is taken without due compensation, "and the legislative determination of value does not "preclude an investigation in the proper judicial "tribunals."

Conceding that it is within the power of the legislature to compel this particular railroad to run this particular additional train over its road, to meet some special public need, it is certainly not within the power of the legislature to compel the railroad to do it for nothing, much less to do it at a loss.

The answer of the Supreme Court of North Carolina to this suggestion was, that the Atlantic Coast Line Railroad Company made considerable money out of its general business in North Carolina and could easily afford to bear the loss, and reference was made to those cases in which it has been held that in fixing rates the

legislature is not confined to a comparison of the receipts and expenditures on a particular section of road or a particular article of freight. It is submitted, however, that there is no analogy between the cases. In the case of rates, the State is making a general regulation applying to the whole traffic and may justly take that whole traffic into consideration. In the present case, there is no general regulation of the traffic of the railroad. There is, on the contrary, an order to run a special train between two points to connect with another road for the convenience of a portion of the public. In such case the sole question is, Has the State the right to compel the railroad to do this at a loss? The fact that in the running of its other trains the company makes money, has no relevancy, unless it be held that the State can appropriate or use one portion of the company's property without compensation because the company makes money out of the remainder.

In the fifth place, the order was an interference with the management of the railroad for the benefit of only a comparatively small portion of the public who were given a special train for their convenience.

There is no allegation, or finding, that the Atlantic Coast Line Railroad has not given the best service practicable to the general public, both in the number of its trains and the arrangement of its schedules. There is no evidence, or finding, that it has not arranged its connections in the best manner possible when the convenience of all the public is considered. There is no evidence, or finding, that it does not run sufficient trains to the points of junction with the Southern Railway or fails to connect with other trains than train 135 at Selma. It is alleged, however (Record, page 78), that passengers from territory reached by certain branch lines of the Atlantic Coast Line Railroad, found it a great convenience to make connection in the afternoon at Selma with train 135 of the Southern Railway, and that when the Southern Railway changed its schedule and broke the

connection, these passengers, about twelve a day, (Record, page 262) were compelled to spend a longer time in their journey to points on the Southern Railway. This inconvenience could not be remedied by any change in the general schedule of the Atlantic Coast Line Railroad without inconveniencing the general public. Whether it could have been remedied by a change of schedule on the Southern Railroad does not appear to have been the subject of investigation. To remedy the inconvenience, the Commission practically ordered the Atlantic Coast Line Railroad to run a special train at a loss.

This, it is submitted, was an unwarrantable interference with the business of the railroad for the benefit of a few. Nor is it any answer to this, to say that all the public who happened to be at points on the branch lines would receive the benefit of the special train, or that the special train was a matter of convenience to such of the public as might wish to use it. Public convenience, as used in the cases justifying regulation of corporations, does not mean any accommodation which the legislature may think desirable. This was pointed out in the case of

Lake Shore, &c., R. W. *vs.* Smith, 173 U. S., 684,

already quoted. Within reasonable limits the State, it is submitted, may make general regulations for the benefit of all the public, but it cannot say to a railroad: "Your schedule is the best you can make; you are man-"aging the road in the best way possible, having regard "to the respective rights of travelers from all sections of "your road; you are making all connections as closely "as practicable; you cannot change your schedules with-"out inconveniencing the public generally; but, we think "the convenience of persons living on certain branch "roads will be served by enabling them to catch a certain "afternoon train on a connecting road, and as that road "has changed its schedule so as to break this connection "you must run a special train at a loss to enable them to "make that connection." If the plea of public convenience can be used in such a case it could be used to justify almost any interference with the business of a

railroad. Special train after special train might be ordered to be run, because of a like convenience to other special travelers until the whole revenue would be exhausted. To accommodate one set by such an order and to deny accommodation to another having an equally meritorious claim would be an unjust discrimination.

After orders to run special trains at a loss, with an attendant exhaustion of half the railroad revenue, could there be a denial of a right to others to have as many additional trains run as the according to them of like conveniences would require? Where does the right to exact running at a loss cease, if it exists? It is submitted that the interference in this case is, to use the language of this court in the case last quoted, "an illegal and unjus-"tifiable interference with the rights of the company."

Finally, it is submitted that even if the legislature had the power to direct the running of a special additional train at a loss in order that a comparatively few passengers from a branch line might make convenient connection with a particular train over another road, the order itself was under the circumstances so unreasonable that it must be considered an unwarrantable interference with the property rights of the Atlantic Coast Line Railroad.

The Atlantic Coast Line Railroad was running four trains daily to Selma and three to Goldsboro, the two connecting points with the Southern Railway. When the Southern Railway broke the connection of train 135 at Selma it also broke the morning connection of a train at Goldsboro. The Atlantic Coast Line Railroad in spite of the fact that it was not responsible for this change, altered its schedules so as to meet the morning train at Goldsboro (Record, page 98), but found it impracticable to alter its schedules for its afternoon train. There is no finding that the Atlantic Coast Line Railroad has failed to do anything in its power to meet the reasonable demands of the public, except that it will not run a special train, at a loss, to accommodate the comparatively

few passengers on its branch lines, who wish to make close connection with a particular train on the connecting road. Its schedules were not new schedules, but had been maintained for ten years. The inconvenience of the branch line passengers was caused, not by these schedules, which it was not practicable to alter, but by the change of schedule of the connecting road. Upon these facts, the Atlantic Coast Line, (not the Southern Railway Company), was ordered to run a special train at a loss to suit the convenience of these branch line passengers who wished to connect with, and, travel over, the Southern Railway. Could there be a more unreasonable and unjustifiable interference with its affairs? It is no answer to this to say that the jury found it was "reason-"able, and proper that for the convenience of the traveling "public" the connection should be made. The other facts found by the jury, coupled with the omission of either finding or testimony justifying the order, make the question one for the court. The finding resulted from a failure properly to instruct the jury as to the duty and rights of the appellant. It is for the court to say what is the nature of the convenience which justifies such an order and how far, for such convenience, the legislature or Commission can interfere with the reasonable exercise by the railroad of its right to operate its own road.

There are two matters referred to in the opinion of the Supreme Court of North Carolina which may be briefly discussed. The court (Record, page 264) seems to be of opinion that the fact that the trains of the Atlantic Coast Line Railroad often failed to make the schedule time to Selma and thus often missed connection, has some weight. The order, however, did not pretend to deal with delay in meeting the existing schedule, nor did the Commission ultimately attempt to interfere with the schedule. On the contrary, it found that no change of schedule was practicable. It attempted to remedy, no defects in the original schedule of both roads, but to meet a condition caused by a change made by the Southern Railway in its

schedule. No previous default of the Atlantic Coast Line Railroad, if such existed, could justify an order on it to run a special train to remedy the inconvenience caused by the Southern Railway's change of schedule.

The Supreme Court of North Carolina also seems to have been of opinion (Record, pages 261-265) that the Commission impartially dealt with both roads because it originally ordered the Atlantic Coast Railroad Company to advance its schedule time twenty-five minutes and ordered the Southern Railway Company upon notice to wait fifteen minutes at Selma. In the one case, however, the road which had not caused the trouble was ordered to change its entire schedule while the other road was allowed to keep its new schedule and merely to hold its trains fifteen minutes on notice, in case of some delay. In the end, as the change of schedule was found by the Commission to be impracticable, the Atlantic Coast Line Railroad Company was ordered to run an additional train at a loss, so that the question of schedules became unimportant.

For the reasons given it is submitted that the judgment should be reversed.

JOHN G. JOHNSON,
WARREN G. ELLIOTT,
FRANK P. PRICHARD,
Attorneys for Plaintiff in Error.

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JAMES H. McKENNEY,
Clerk.

(19645)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

(No. 15)

THE ATLANTIC COAST LINE RAILROAD COMPANY,

PLAINTIFF IN ERROR,

versus

THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

BRIEF OF

ROBERT D. GILMER,

ATTORNEY-GENERAL OF NORTH CAROLINA,

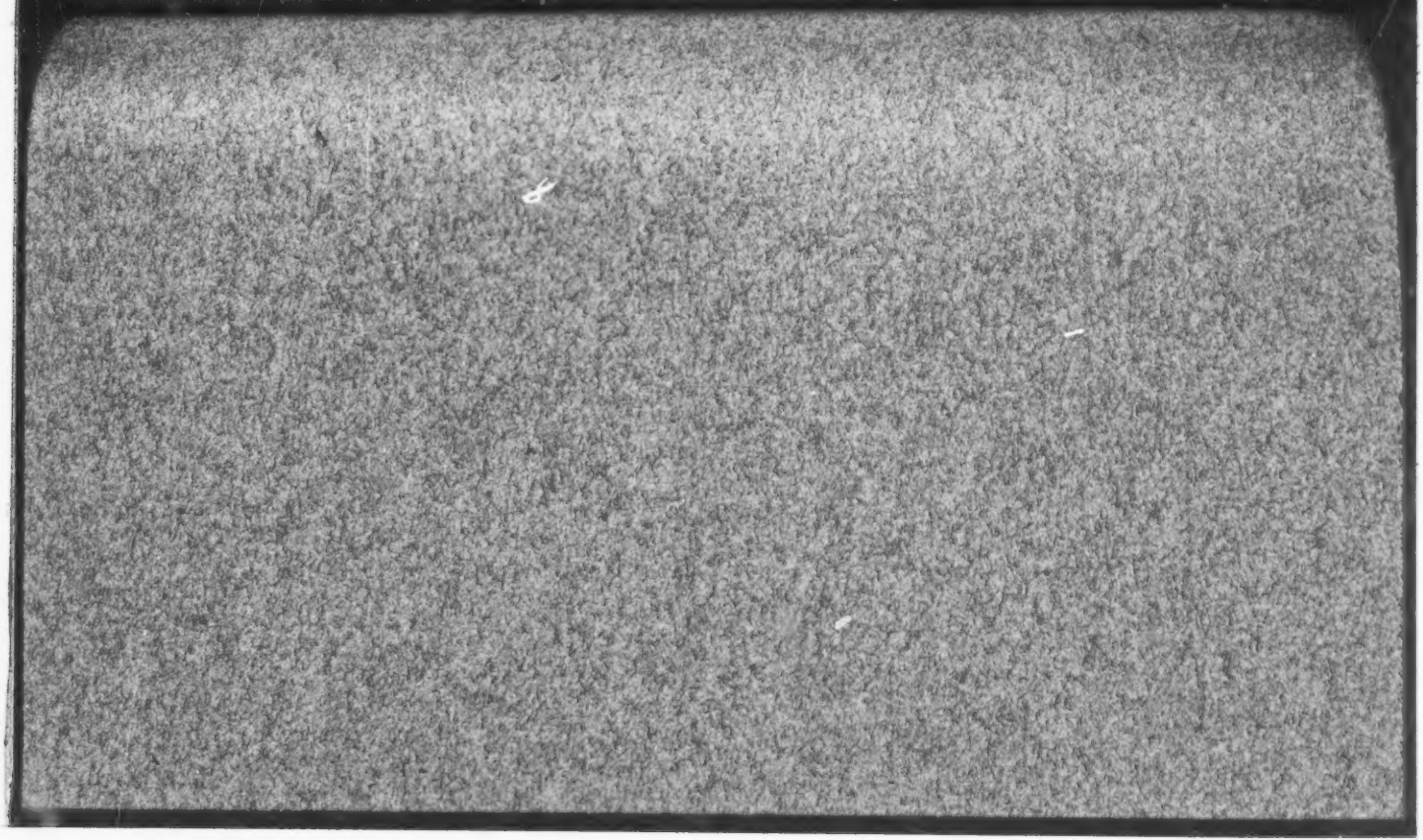
AND

F. A. WOODARD,

COUNSEL FOR THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

E. M. UZZELL & CO., PRINTERS, RALEIGH.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

(No. 186)

THE ATLANTIC COAST LINE RAILROAD COMPANY,

PLAINTIFF IN ERROR,

versus

THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

STATEMENT OF THE CASE.

It appears from the record that for some ten years prior to 11th October, 1903, the passenger traffic from a large portion of eastern North Carolina to Raleigh, and to points west thereof, was made by the plaintiff in error, the Atlantic Coast Line Railroad Company, connecting with the Southern Railway at Selma at 2:50 P. M. daily. For a year or two prior to that day the connection became very irregular, to the great inconvenience of the traveling public, passengers frequently being compelled to lie over at Selma until 11 o'clock at night and then compelled to take a mixed train, with uncomfortable accommodations, to go westward. The Southern Railway, finding its time between Goldsboro and Greensboro (thirty-eight miles per hour) dan-

gerous by reason of the condition of its track, changed its schedule, leaving Goldsboro thirty minutes earlier. The condition being called to the attention of the Corporation Commission, it undertook to remedy the evil. After much correspondence, and conference with the officials of both roads, the Commission, on December 8, 1903, made the following order:

> "Whereas, the convenience of the traveling public requires that close connection be made between the passenger trains on the Atlantic Coast Line Railroad and the Southern Railway at Selma daily, in the afternoon of each day; and whereas, it appears that such close connection is practicable: *It is ordered,* that the Atlantic Coast Line Railroad arrange its schedule so that the train will arrive at Selma at 2:25 P. M. each day, instead of 2:50 P. M., as the schedule now stands. *It is further ordered,* that if the Atlantic Coast Line trains have passengers *en route* for the Southern Railway and are delayed, notice shall be given to the Southern Railway, and that the Southern Railway shall wait fifteen minutes for such delayed trains upon receipt of such notice.
>
> "This order shall take effect 20th December, 1903.
>
> "FRANKLIN McNEILL, *Chairman.*
>
> "H. C. BROWN, *Clerk.*"

This order quickened the arrival time of the Atlantic Coast Line train at Selma twenty-five minutes, but, as it required the Southern to wait at that point fifteen minutes for delayed trains, it more than divided the time between the roads, requiring only ten minutes advance of time on the part of the plaintiff in error to secure this convenience to the traveling public. On December 18, 1903, upon the application of counsel for the plaintiff in error, the order was suspended and both companies notified to appear before the Corporation Commission at Raleigh on January 12, 1904, that "the matter of the connection at Selma of the Atlantic Coast Line going south with that of the Southern Railway going west in the afternoon" might be heard, and asking both companies to have representatives present.

The plaintiff in error appeared, by its superintendent and its general counsel; the other company was also represented. After a hearing, "the situation being thoroughly discussed," the Commission made a full finding of the facts, and made the following order:

> *"And it is therefore ordered,* that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 P. M. and by and before 2:25 P. M. each day. *It is further ordered,* that the Southern Railway hold its train No. 135 at Selma fifteen minutes, if for any reason the Atlantic Coast Line train, connecting at that point, is delayed."

It was further provided that the order should take effect January 26, 1904. To this judgment the Southern Railway Company did not except. The Atlantic Coast Line filed the following exceptions:

> 1. That it was not practicable to make the connection at Selma by extending the run of either its Plymouth or its Springhope train to Selma.
> 2. That it would be unprofitable, and a loss, for it to make the connection by putting on an additional train from Rocky Mount to Selma.
> 3. The Commission has no power to require it to put on extra trains.
> 4. That it is not practicable to make the connection without putting on an extra train, which the Commission has no power to do.
> 5. That the order is unreasonable because passengers from Rocky Mount can make connection at Goldsboro at 6:50 A. M. or at Selma by night train over the Southern, or they could go up to Weldon and go over the Seaboard Railroad.

A letter in the record from the transportation department of the plaintiff in error, dated January 23, 1904, states that prior to the breaking of connection at Selma its 2:50 P. M. train transported an average of twelve passengers daily for

the Southern at Selma, while since the break in the connection the average was only two. This shows 3,650 passengers annually inconvenienced by the failure to connect at that point. There is evidence elsewhere in the record that it was a very much larger number. On February 2, 1904, the exceptions were heard by the Commission; testimony of witnesses was offered by the plaintiff in error, together with other evidence. Upon all the evidence, and after argument by counsel for the plaintiff in error, the Commission, February 13, 1904, made a fuller finding of fact, in the course of which it is recited, *inter alia,* that by the connection at Selma at 2:50 P. M. between the Atlantic Coast Line train No. 29 (southbound) and the Southern train No. 135 (westbound), "the greater portion of the section of the country reached by the said branch roads had, for years, furnished the nearest and cheapest route of travel to Raleigh and other Southern Railway points. The greater portion of the travel between the Atlantic Coast Line territory and the Southern Railway points was by this route. It is admitted in the correspondence of the Atlantic Coast Line in this matter that this was a most important connection, being the principal outlet for passengers *en route* from eastern North Carolina territory to Raleigh and other Southern Railway points. There seems to have been no complaint about the failure of these railroad companies to keep this schedule, and make this connection, until about the year 1900. The Atlantic Coast Line informs the Commission that 'this matter has been a frequent source of correspondence between this company and the Southern Railway Company since 1900, and that during this time frequent complaints have been made to this company by the Southern Railway Company of its failure to make schedule time at Selma.' "

The Commission further found, giving reasons therefor, that passengers ought neither to be required to go a much longer distance around by Weldon nor to make connection at unreasonable hours at Goldsboro (6:50 A. M.), nor take a night train (11 P. M.) connection at Selma, when a few minutes quickened time would maintain the connection which has been made at Selma in the early afternoon for more than ten years. The Commission also found that the plaintiff in error could make the connection, if it chose, by extending the run of its Springhope train, which, coming down nineteen miles from that place, reached Rocky Mount at 12:10, where it lay over until 4 P. M. before returning to Springhope, during which four hours it could easily be run forty-one miles and back, making this connection. And the Commission further found that the connection could be made by the extension of the Plymouth train, which is scheduled to leave Plymouth for Rocky Mount, a distance of seventy miles, at 7:30 A. M., reaching Rocky Mount at 10:30, where it lays over until 4 P. M. before returning to Plymouth. During which five and one-half hours it could easily make the trip to Selma and return and make the connection.

The conductor, engineer and train crew of the Plymouth train are not employed during this five and one-half hours.

It thus concludes:

> "There is, within the territory served by these branch lines, approximately 400,000 inhabitants. The report of the Atlantic Coast Line Company to this Commission for the fiscal year ending June 30, 1903, shows net earnings from operation in North Carolina amounting to $1,943,116.63; and that there was a surplus of $1,293,983.54 after paying interest on its debts and five per cent. dividends on its stock, both common and preferred, from the net earnings of the company's entire line. On a mileage basis this will show that there was a surplus of net earnings in North Carolina for that year of approximately $324,493.

"The Commission is of the opinion that the facilities given heretofore by the Atlantic Coast Line to the traveling public should not be lessened; that the connection furnished passengers from the Washington branch and Norfolk and Carolina branch, the Plymouth branch, and the Nashville branch, with No. 135 Southern Railway passenger train at Selma, and also for all points between Rocky Mount and Selma, for nearly ten years, should be restored; that if this cannot be done by the Atlantic Coast Line train No. 39, as formerly, on account of this train being heavier, containing usually one or more express cars, and in all usually ten or more cars, and on account of increase in business between Richmond and Selma, which necessitates longer stops, then other facilities should be furnished by the Atlantic Coast Line Company; that this connection, which was the principal outlet for passengers from eastern Carolina to Selma and other Southern Railway points for the last ten years, instead of being abandoned, should be made permanent and certain, and that this result be accomplished by carrying out the order heretofore made in this Court. *It is ordered,* therefore, that the exceptions be and are hereby overruled.

"FRANKLIN McNEILL, *Chairman.*"

From this order, thus repeated the third time, and after the fullest investigation, occupying several months, the plaintiff in error appealed to the Superior Court. In that Court the following issues were submitted, the Corporation Commission excepting:

"1. Is it practicable for train No. 39 of the Atlantic Coast Line, due to arrive at Selma at 2:50 P. M., to make connection at Selma with train No. 135, westbound, of the Southern Railway, due to leave Selma at 2:25 P. M.?

"2. Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return, and if so, what would be the additional expense?

"3. Is it practicable to make said connection by the use of the Springhope train, and if so, what would be the additional expense?

"4. In order to make such connection, would the defendant company have to run an additional train on its main line from Rocky Mount to Selma?"

The Court directed the jury to answer the first three issues "No" and the fourth issue "Yes," and the Corporation Commission excepted. The following issues the jury were permitted to answer, to which they responded as follows:

"5. Is it practicable for said train to run the schedule prescribed in the plaintiff's order, having due regard to the number of trains and number of stops on the defendant's main line from Rocky Mount to Selma? 'Yes.'

"6. What would be the daily cost of operating such train from Rocky Mount to Selma and return? 'Forty dollars.'

"7. What would be the probable daily receipts from such train? 'Twenty-five dollars.'

"8. Is it reasonable and proper that for the convenience of the traveling public the defendant company should be required to make such connection? 'Yes.'"

Upon the verdict the Court rendered the judgment set out in the record, p. 86. The defendant in error excepted to this judgment and appeal to the Supreme Court. The Supreme Court reversed said judgment and rendered the following judgment (record, p. 278):

"This cause came on to be heard on the transcript of the record from the Superior Court of Wake County, upon consideration whereof this Court is of opinion that there is error in the ruling of the said Superior Court, and it is therefore considered and adjudged by the Court here that the judgment of said Superior Court be reversed, and that the order of the Corporation Commission of February 13, 1904, requiring defendant, the Atlantic Coast Line Railroad Company, to furnish transportation to passengers from Rocky Mount to Selma after 12:50 P. M. and by or before 2:25 P. M. each day, and that the Southern Railway Company hold its train No. 135 at Selma fifteen minutes, if for any reason the Atlantic

> Coast Line train, connecting at that point, is delayed, is in all respects valid and is hereby affirmed. And it is further ordered and adjudged that a *cessat executio* till February 10, 1905, be entered on the judgment docket of this Court, and until that date no mandate shall issue to the defendant upon this judgment."

For the decision in the said case, see 137 N. C. Report, p. 1.

FAILURE OF ATLANTIC COAST LINE TRAIN No. 39 TO MAINTAIN SCHEDULE TIME BREAKS SELMA CONNECTION.

Mr. Borden, the general superintendent of transportation of the Coast Line Company, in a communication to the North Carolina Corporation Commission, dated December 14, 1903, transmitted copies of daily train reports showing the time of the arrival of train No. 39 at Selma from August 1, 1903, to December 10, 1903. These reports disclose an average daily delay of this train in arriving at Selma of thirty-four minutes.

Mr. Borden says (record, p. 19):

> "We have not been able to maintain the present arriving time at Selma, due to our northern connections delivering train late, and increase of our own business along the line, which necessarily consumes more time at various stops."

On this point we quote the following from the testimony of Mr. Borden (record, pp. 181, 182):

> *Q.* "Now, I will ask you this: If, as a matter of fact, prior to the Southern moving up twenty-five minutes, if that connection at Selma was not a very uncertain one on the part of the Coast Line?"
>
> *A.* "I would say yes."
>
> *Q.* "The failure of people from eastern Carolina to get to Selma prior to October was due to the failure of the Coast Line's No. 39 to reach Selma on time?"
>
> *A.* "Yes."
>
> *Q.* "If your 39 arrived at Selma on time, you would make connection every day?"
>
> *A.* "Yes."

Q. "And the failure to connect at Selma was due to the failure of your train to reach Selma at 2:50; for instance, on the 29th of January, 39, this train, arrived at Selma 3:45?"

A. "Yes."

Q. "It arrived on the 30th at 5?"

A. "Yes; that is taken from the record."

It thus appears that the convenient and long-established connection at Selma was broken by the Coast Line Company. The North Carolina Corporation Commission so found. The following is taken from its order of January 26, 1904 (record, p. 29):

> "For the past year, although announced in the schedule of these railroad companies, the connection has not been kept. The reason for this failure was the fact that the Atlantic Coast Line train did not make the schedule time. The record of train sheets of the Atlantic Coast Line Railroad Company shows that No. 39 only arrived at Selma on schedule time twice between August 1, 1903, and January 11, 1904, and that during this period No. 39 was more than ten minutes late every day except twenty-four."

So that, during this period passengers of the plaintiff in error going to points west of Selma were required to remain at Selma until 10:40 P. M. in a waiting-room insufficiently lighted and heated, and in order to continue their journey were compelled to take a mixed train, running on a slow schedule, for Raleigh and points west thereof.

SELMA, THE PRINCIPAL OUTLET FOR PASSENGER TRAFFIC FROM EASTERN NORTH CAROLINA TO RALEIGH AND POINTS WEST.

The following appears in the testimony of Mr. Borden (record, p. 180):

Q. "The route for Raleigh and points west for the people in eastern Carolina was *via* Selma?"

A. "Yes, it was the most direct route."

Q. "It was the most important connection for the people of eastern Carolina?"

A. "It was a very convenient connection."

Q. "It was the principal outlet for passengers from eastern Carolina to Raleigh and other points on the Southern?"

A. "Yes."

On the trial of this cause in the Superior Court of Wake County the eighth issue—"Is it reasonable and proper that, for the convenience of the traveling public, the defendant company (the plaintiff in error here) should be required to make such connection?"—was answered "Yes."

In the order made by the North Carolina Corporation Commission on February 13, 1904, the following appears (record, pp. 81, 82):

> "The Commission is of the opinion that the facilities given heretofore by the Atlantic Coast Line Company to the traveling public should not be lessened; that the connection furnished passengers from the Washington branch, the Norfolk and Carolina branch, the Plymouth branch and the Nashville branch with No. 135 Southern Railway passenger train at Selma, and also for all points between Rocky Mount and Selma, for nearly ten years, should be restored; that if this cannot be done by the Atlantic Coast Line train No. 39, as formerly, on account of this train being heavier, containing usually one or more extra express cars, and in all usually ten or more cars, and on account of increase in business between Richmond and Selma, which necessitates longer stops, then other facilities should be furnished by the Atlantic Coast Line Company; that this connection, *which was the principal outlet for passengers from eastern Carolina to Selma and other Southern Railway points for the last ten years,* instead of being abandoned, should be made permanent and certain, and that this result be accomplished by carrying out the order heretofore made in this Court."

ARGUMENT.

Counsel for the plaintiff in error insisted in their argument before the Supreme Court of North Carolina, and the assignments of error here present practically the same objections, to the order of the Corporation Commission.

1. THAT THE CORPORATION COMMISSION HAD NO POWER OR AUTHORITY TO MAKE THE ORDER REQUIRING THE CONNECTION TO BE MADE.
2. THAT THE ORDER IS A VIOLATION OF THE CONSTITUTION OF THE UNITED STATES AND OF NORTH CAROLINA.
3. THAT THE ORDER IS UNREASONABLE AND UNJUST.

The answer to the first objection is that the Supreme Court of North Carolina has held that the power to make the order in question was conferred upon the Corporation Commission by the statute creating it. It has been uniformly held that the construction of a State statute by the Supreme Court of a State will be followed by the Supreme Court of the United States.

The third contention, that the order is unjust and unreasonable, was settled by the finding of the jury, who, in response to the eighth issue—"Is it reasonable and proper that, for the convenience of the traveling public, that the company should make such connection?"—answered said issue in the affirmative.

The Commission having the power to make the order, the jury having found that the order was reasonable and just, and this finding and conclusion having been approved by the Supreme Court of North Carolina, it is respectfully submitted that this question is not reviewable here.

THE RECORD DOES NOT PRESENT A FEDERAL QUESTION.

The plaintiff in error seeks to raise the Federal question by the suggestion that the enforcement of the order of the North Carolina Corporation Commission "would deprive it of its property without compensation and without due process of law." The assignments of error (record, pp. 4, 5, 6, 7), involving the constitutional question, are based upon the theory that the order of the Corporation Commission *requires* the plaintiff in error to operate an extra train between Rocky Mount and Selma; and that, as the cost of operating such train would exceed the probable receipts by fifteen dollars per day, the judgment affirming the order of the Corporation Commission is void, because such order deprives plaintiff in error of its property without compensation and without due process of law, and therein violates the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of North Carolina, referring to the order of the Commission, said (*Railroad Connection Case,* 137 N. C., 1, 22):

> "That order simply directed the defendant to make the connection daily at Selma at the time mentioned therein, without specifying whether this should be done by quickening the speed of train No. 39 or by extending the run of the Springhope or the Plymouth train, or by putting on an extra train from Rocky Mount to Selma, and our judgment leaves to the defendant the same liberty of choice as to the mode in which it shall put into effect the order of the Commission."

The Supreme Court of North Carolina further said (*Railroad Connection Case, supra,* p. 20):

> "On the third issue, as to the practicability of running the Springhope train to Selma in the four hours

> that it lies over at Rocky Mount, the evidence was uncontradicted that this could be done, and there was even evidence from two reputable witnesses which proved (if believed by the jury) that the costs of the extra run would be only ten dollars, showing a profit of fifteen dollars daily. * * * It follows that it was error to instruct the jury, in response to the fourth issue, to find that the connection could only be made by an additional train from Rocky Mount to Selma."

And so, when the Court held, upon the evidence and verdict, that the order of the Commission requiring the plaintiff in error to make the connection was a reasonable order (the convenience of the traveling public requiring it to be made), this Court will not reverse said judgment and hold that the order was unreasonable and therefore void, unless it is made clearly to appear that the performance of the order would entail such loss upon the plaintiff in error as would prevent it from paying its operating expenses, interest on its indebtedness and a reasonable dividend to its stockholders; and it is incumbent upon the plaintiff in error to conclusively establish that such will be the effect of the order. Upon an examination of the testimony of the witnesses for the plaintiff in error, the cost of making the connection by the use of the Springhope or Plymouth train would not exceed or equal the revenue to be derived from its operation. Indeed, it is not insisted that the order of the Commission would produce any such results.

As decided by the Supreme Court of North Carolina, it would not be necessary for the plaintiff in error to operate an extra train between Rocky Mount and Selma, and the alleged loss of fifteen dollars per day which the plaintiff in error contends is a taking of its property without due process of law would be avoided. Thus considered, it is submitted that the case does not present a Federal question.

The only appellate jurisdiction conferred by Congress upon this Court to review the judgments or decrees at law or in equity of the highest Court of a State is by writ of error, and on writ of error nothing is removed for re-examination but questions of law arising upon the record. The findings of fact made in the Supreme Court of the State will be the basis of the decision of this Court.

Quimby v. Boyd, 128 U. S., 488, 489.
Dower v. Richards, 151 U. S., 658.
Baldwin v. Kansas, 129 U. S., 52.
Egan v. Hart, 165 U. S., 188.
Thayer v. Spratt, 189 U. S., 346.
Adams v. Church, 193 U. S., 510.
Clipper Mining Co. v. Eli Mining and Land Co., 194 U. S., 220.
Smiley v. Kansas, 196 U. S., 447; 49 Law Ed., 546, and cases cited in the note.
Chrisman v. Miller, 197 U. S., 313.
Noble v. Mitchell, 164 U. S., 367.
Turner v. New York, 168 U. S., 90, 95.

In *Clipper Mining Co. v. Eli Mining and Land Co., supra,* at p. 222, Mr. Justice Brewer said:

> "It is the settled rule that this Court, in an action at law at least, has no jurisdiction to review the conclusion of the highest Court of the State upon questions of fact."

In *Adams v. Church, supra,* Mr. Justice Day, at p. 513, said:

> "The finding of facts made in the Supreme Court of Oregon is binding upon this Court and will be the basis of the decision here."

In *Smiley v. Kansas, supra,* it was held:

> "This Court will not inquire whether the finding of the jury in the State Court is against the evidence; it will take the facts as found and consider only

whether the State statute involved is violative of the Federal Constitution.

"The power in the State Court to determine the meaning of a State statute carried with it the power to prescribe its extent and limitations as well as the method by which they shall be determined."

In *Chrisman v. Miller, supra,* it is said:

"This Court does not review questions of fact in cases coming from a State Court, but accepts the conclusions of the State tribunal as final."

In *Minn. & St. Louis R. R. Co. v. Minnesota,* 193 U. S., 53, the Supreme Court of the State of Minnesota, in reviewing an order of the Railroad and Warehouse Commission requiring a railroad company to erect a station at a certain point on its line, found that the erection of the station in question "was necessary for the accommodation of the public transacting business with the company at that point." In this Court it was insisted by the railroad company that the order was unreasonable and deprived it of its property without due process of law. This Court, however, upheld the statute of the State of Minnesota as construed by the Supreme Court of the State, to the effect that the Commission had power to make the order in question; and further, that the finding of fact by the highest Court of the State that the station was necessary for the convenience of the public was not open to review here, but was "like the verdict of a jury, conclusive in this Court." And it was expressly held that the record did not present a Federal question.

The plaintiff in error, in its assignments of error, attacks the order of the Commission as unreasonable upon the suggestion that the order was made for the sole convenience of the passengers of the Southern Railway. This contention cannot be maintained. The order was made to promote the comfort and

convenience of the traveling public. Every witness who testified to the discomfort, expense and inconvenience to which passengers were subjected by the failure of the Coast Line to maintain its schedule and thereby make the connection at Selma related to a passenger of the plaintiff in error who, in order to reach Selma, had traveled over its system. It is submitted that the duty of the Atlantic Coast Line Railroad Company as a common carrier is not discharged simply by transporting a passenger to a point at which its line connects with the line of another railroad, but it is under obligation to transport its passengers over its line of railroad in such way and at such time as to enable them to make convenient connection to their points of destination.

In *Chicago, etc., Railway Co. v. Minnesota,* 134 U. S., at p. 461, Mr. Justice Bradley said:

> "When a railroad company is chartered it is for the purpose of performing a duty which belongs to the State itself. It is chartered as an agent of the State for furnishing public accommodation. The State might build its railroads if it saw fit. It is its duty and its prerogative to provide means of intercommunication between one part of its territory and another."

In *Lake Shore & Michigan Southern Railway v. Ohio,* 173 U. S., 285, 302, Mr. Justice Harlan, speaking for the Court, said:

> "The plaintiff in error accepted its charter subject necessarily to the condition that it would conform to such reasonable regulations as the State might from time to time establish that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us was in itself a regulation of interstate commerce. It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and as far

as practicable make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains."

THE SCOPE OF THE DECISION OF THE SUPREME COURT OF NORTH CAROLINA.

The Supreme Court of North Carolina decided:

1. THAT THE CONNECTION AT SELMA BY THE PLAINTIFF IN ERROR IS REASONABLE AND PROPER FOR THE CONVENIENCE OF THE TRAVELING PUBLIC, AS FOUND BY THE TRIAL JURY.

2. THAT THE ORDER OF THE COMMISSION IN EFFECTING THIS CONNECTION DOES NOT REQUIRE THE PLAINTIFF IN ERROR TO OPERATE AN EXTRA TRAIN, BUT THAT THE CONNECTION MAY BE EFFECTED BY THE EXTENSION OF EITHER THE SPRINGHOPE OR THE PLYMOUTH RUN.

3. THAT THE CORPORATION COMMISSION OF THE STATE HAS POWER TO REQUIRE A RAILROAD COMPANY TO HAVE A TRAIN ARRIVE AT A CERTAIN STATION ON ITS ROAD AT A CERTAIN SCHEDULE TIME, SO AS TO CONNECT WITH THE TRAIN OF ANOTHER COMPANY.

The North Carolina Corporation Commission found as a fact that its order could be carried into effect by the extension of either the Springhope or the Plymouth run, and this finding was affirmed by the Supreme Court of North Carolina.

The highest Court of the State having therefore decided against the plaintiff in error upon an independent ground, not involving a Federal question, and broad enough to maintain the

judgment, it is submitted that the judgment of the Supreme Court of North Carolina should be affirmed or the writ of error dismissed without considering the Federal question, assuming that one is presented in the record.

Kennebec & P. R. Co. v. Portland & R. R. Co., 14 Wall., 23.
Hammond v. Johnson, 142 U. S., 73.
Northern P. R. Co. v. Ellis, 144 U. S., 458.
Delaware City, etc., v. Reybold, 142 U. S., 636.
Walter A. Wood Mowing & Reaping Mch. Co. v. Skinner, 139 U. S., 293.
Henderson Bridge Co. v. Henderson, 141 U. S., 679.
Missouri P. R. Co. v. Fitzgerald, 160 U. S., 556.
California Powder Works v. Davis, 151 U. S., 389, 393.
Murdock v. Memphis, 20 Wall., 590.
McLaughlin v. Fowler, 154 U. S., 663.

In *Murdock v. Memphis, supra*, this Court announced, among other conclusions, the following:

> "4. If it (the issue raised by the question of Federal law) was erroneously decided, then the Court must further inquire whether there is any other matter or issue adjudged by the State Court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. If this be found to be the case, the judgment must be affirmed without examination into the soundness of the decision of such other matter or issue.
>
> "5. But if it be found that the issue raised by the question of Federal law must control the whole case, or that there has been no decision by the State Court of any other matter which is sufficient of itself to maintain the judgment, then this Court will reverse that judgment, and will either render such judgment here as the State Court should have rendered, or will remand the case to that Court for further proceedings, as the circumstances of the case may require."

To the same effect is *McLaughlin v. Fowler, supra,* where it is held that—

> "In cases brought to the Supreme Court from a State Court, the former can only look beyond the Federal question when that has been decided erroneously, and then only to see whether there are any other matters or issues adjudged by the State Court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question."

In this connection we desire to advert to the order of the North Carolina Corporation Commission, which is the basis of this litigation. It is as follows (record, p. 30):

> *"It is therefore ordered, that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 P. M. and by or before 2:25 P. M. each day.*
>
> *"It is further ordered, that the Southern Railway hold its train No. 135 at Selma fifteen minutes, if for any reason the Atlantic Coast Line train connecting at that point is delayed."*

We stress the point that this order does not require the plaintiff in error to operate an extra train between the points named therein. It will be noted that when the trial jury found that a compliance with the order of the Commission would entail a probable loss of fifteen dollars per day to the plaintiff in error, the finding related exclusively to the extra train and not to the extension of either the Springhope or the Plymouth run. There is nothing in the record which establishes the contention that to carry into effect the order of the Commission by either one of the latter methods would not be compensatory.

If, then, the Corporation Commission had the power to make the order (and the Supreme Court of North Carolina expressly so held), and it is reasonable and proper for the convenience of the traveling public for the plaintiff in error to carry into effect

the order (and the trial jury expressly so found), and the alleged *probable* loss of fifteen dollars per day obtains only in the event that an extra train is operated, and does not obtain in the event of an extension of either the Springhope or Plymouth run, wherein, we ask, does the order do violence to the Fourteenth Amendment by depriving the plaintiff in error of its property without compensation and without due process of law?

The jury having found that the convenience of the traveling public required the plaintiff in error to make the connection at Selma, the Supreme Court of North Carolina having held that the Corporation Commission had the power under the statute to require the plaintiff in error to make the connection, and that it was practicable for the connection to be made by three methods, it was incumbent upon the plaintiff to show that upon the adoption of any one of the three methods suggested by the Court a loss would be sustained by it before it could invoke the principle relied on. Two of the methods suggested, as have been fully demonstrated, were entirely practicable—did not require any additional equipment. If either of these methods were adopted by the plaintiff in error, the connection could have been made without any loss. It does not appear to this Court which of these methods the plaintiff in error has adopted in order to perform the order of the Corporation Commission. For aught it appears in the record, the plaintiff in error may have utilized either the Plymouth train or the Springhope train in making the connection. Certainly the presumption is that the plaintiff in error, having due regard to its own interest, has adopted the least expensive practicable method.

The order of the Commission went into effect February 10, 1905. Under the laws of North Carolina, the plaintiff in error is required to submit to the North Carolina Corporation Com-

mission statements of the receipts and expenditures in the operation of its trains. We submit that, inasmuch as the Corporation Commission has found as a fact that its order can be carried into effect in any one of the three different methods hereinbefore suggested, which order was affirmed by the Supreme Court of North Carolina, did not the duty devolve upon the plaintiff in error to undertake in good faith to carry into effect the order of the Commission? And if by experimental operation it had been ascertained that the order of the Commission could not in any of the three ways be made effective without loss to the company, to have applied to the Commission for an annulment or modification of its order, or an increase in the compensation of its passenger rates, and, in the event of its refusal to grant relief, to have invoked, then, the aid of this Court. Then the Court could have passed upon the question in the light of the actual, rather than the probable, result of a compliance with the order of the Corporation Commission.

It is well settled that the presumption of law is always in favor of the maintenance of the order of a railroad commission, and the same will not be set aside unless flagrantly in violation of the rights of the railroad company.

Dow v. Beidleman, 125 U. S., 680.
Reagan v. Trust Co., 154 U. S., 362, 395.
Railroad v. Tompkins, 176 U. S., 167, 173.
Brannon on the Fourteenth Amend., p. 197.

We desire now to submit the view that if the Court should be of the opinion that a Federal question is presented in the record there has been no decision thereon by the Supreme Court of North Carolina of which the plaintiff in error can complain.

THE ORDER OF THE CORPORATION COMMISSION DOES NOT DEPRIVE PLAINTIFF IN ERROR OF ITS PROPERTY UNDER THE "DUE PROCESS OF LAW" CLAUSE OF THE FEDERAL CONSTITUTION.

There is no deprivation of property without due process of law involved in the order of the Commission, but only the legitimate *regulation* of property affected with a public use for public convenience. It may be observed here that this Court said, in *Fallbrook Irrigation District v. Bradley*, 164 U. S., 112, 158:

> "There is no specific prohibition in the Federal Constitution which acts upon the States in regard to their taking private property for any but a public use. The Fifth Amendment, which provides, among other things, that such property shall not be taken for public use without just compensation, applies only to the Federal Government, as has been many times decided. In the Fourteenth Amendment the provision regarding the taking of private property is omitted, and the prohibition against the State is confined to its depriving any person of life, liberty or property without due process of law."

There is a clear distinction between taking or an appropriation of property for public use and regulating the use of property devoted to a use in which the public has an interest. In the former case the State compels the dedication of the property, or some interest therein, to a public use, or, if already dedicated to one public use, then to another. In the latter case the owner has voluntarily, or in return for rights conferred by charter, dedicated the property to a use in which the public has an interest, and the use of that property so dedicated is merely regulated for the public welfare. The order of the North Carolina Corporation Commission complained of does not compel the plaintiff in error to dedicate its property to the public use or to a different use from that to which it has already been

dedicated. In consideration of rights bestowed upon it by the State in its charter, it has voluntarily undertaken to operate its road in North Carolina subject to reasonable regulations designed to promote the general welfare and convenience of the traveling public, made by the Legislature or by a body to whom this power has been specially delegated.

The public safety, interest and convenience are clearly embraced within the legislative power of the State, and the exercise of this power does not deprive the plaintiff in error of its property without due process of law under the Constitution of North Carolina or of the United States.

Brass v. North Dakota, 153 U. S., 391.
Budd v. New York, 143 U. S., 517.
Munn v. Illinois, 94 U. S., 113.
Jacobson v. Railroad Co., 71 Minn., 519.
Smyth v. Ames, 169 U. S., 466.
Lake Shore, etc., Railway Co. v. Smith, 173 U. S., 684.
Gladson v. Minn., 166 U. S., 427.
Railroad Co. v. Gibbes, 142 U. S., 386.
Wisconsin, etc., Railroad Co. v. Jacobson, 179 U. S., 287.
Minn. & St. Louis R. R. Co. v. Minn., 193 U. S., 53.
Railroad v. Railroad Commission of La., 109 La., 247.

In *Munn v. Illinois, supra*, this Court held that—

> "When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use."

This Court, speaking through Mr. Justice Peckham in *Wisconsin, etc., Railroad Co. v. Jacobson, supra*, at p. 296, said:

> "Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper

> manner the conduct and business of railroad corporations have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. * * * The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests and to subserve primarily the public good and convenience."

In *Gladson v. Minn., supra,* at p. 430, this Court declared that—

> "The State which created the corporation may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. It may prescribe the location and plan of construction of the road, the rate of speed at which the trains shall run, and the places at which they shall stop, and may make any other reasonable regulations for their management in order to secure the objects of the incorporation, and the safety, good order, convenience and comfort of the passengers and of the public."

The books contain almost countless cases in which the power of the Legislature to provide reasonable rules and regulations, directly or through a commission, to control common carriers, has been upheld. And it has been universally declared that these rules and regulations are not limited to matters affecting the public safety or the public health, but that they extend also to matters concerning public comfort and public convenience.

AN ORDER OF A STATE RAILROAD COMMISSION A JUDICIAL QUESTION FOR THE COURTS OF THE UNITED STATES—WHEN?

This question has been answered by this Court in *Chicago, etc., Railway Co. v. Wellman,* 143 U. S., 339, 344, with reference to rates, as follows:

> "The Legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates. *Stone v. Farmers Loan & Trust Co.*, 116 U. S., 307; *Chicago, Milwaukee, etc., Railway v. Minnesota*, 134 U. S., 418."

It is submitted that the Courts of the United States will not treat as a judicial question a law of a State Legislature or an order of a body created by it, requiring a railroad company to perform a certain service necessary for the convenience of the public and connected with its duty as a common carrier, unless the order is so unreasonable as to practically destroy the value of the property of the company. And unless this is so, this Court cannot declare that such an order is in conflict with the Constitution of the United States as depriving the company of its property without due process of law.

This Court declared, in *St. Louis, etc., Railway Co. v. Gill*, 156 U. S., 649, that—

> "When a State Legislature establishes a tariff of railroad rates so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, Courts of the United States may treat it as a judicial question and hold such legislation to be in conflict with the Constitution of the United States as depriving the company of its property without due process of law and as depriving it of the equal protection of the laws."

In the *Gill case* just cited it was adjudged by this Court that whether a tariff of rates is or is not a reasonable one is to be ascertained by its effect upon the entire line of the road, and not merely a part of it, the Court unanimously holding that the effect of a tariff of rates upon a part of a road cannot be considered as unreasonable in any case if the entire line within the State can, under the tariff, earn remunerative freights and fares. The following paragraph is taken from the opinion in *St. Louis, etc., Railway Co. v. Gill, supra*, at p. 665:

"It therefore appears that the allegations made in the evidence did not cover the company's railroad as an entirety even in the State of Arkansas, but were made in reference to that portion of the road originally belonging to the St. Louis, Arkansas and Texas Railway, and extending from the northern boundary of Arkansas to Fayetteville in said State. In this state of facts we agree with the views of the Supreme Court of Arkansas, as disclosed in the opinion contained in the record and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effect of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas."

In *St. John v. Erie Railway Co.*, 22 Wall., 136, 149, this Court said:

"We are aware of no legal principle which would authorize the stockholders in question to analyze the business, select out a part of it, and to say that the *net earnings* [italics in opinion] specified must be a predicate of that part and of none other. * * *

"The business of the road was a unit. If it had been disintegrated as proposed by the complainant, we apprehend it would have been found that the correlations of the main stem and the branches were such and that the expenses and charges incident to the entire business and those of the several parts were so interwoven and blended that an accurate ascertainment of the net profit of the main line, and any of the auxiliaries taken separately from the rest, would have been impracticable."

Railroad Co. v. Dey (C. C.), 35 Fed., 866.
Railroad v. Minn., 186 U. S., 261.

The doctrine that if a railroad as an entirety does a business which is compensatory it has no legal right to complain that an order of a railroad commission may deprive it of revenue over a portion of its line has been affirmed by the highest Courts of several States. Among these cases the following are noted:

Railway Co. v. Smith, 60 Ark., 221.
In the matter of Auburn & W. R. Co., 37 App. Div., 162; 55 N. Y. Supp., 895.
Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, 109 La., 247.
Pensacola, etc., R. R. Co. v. State of Fla., 25 Fla., 310.
The People v. St. L., A. & T. H. R. R. Co., 176 Ill., 512.
Union Traction Co. v. City of Chicago, 199 Ill., 579.

In *Railway Co. v. Smith, supra*, the Supreme Court of Arkansas held that—

> "An allegation that a passenger rate fixed by the Legislature is unreasonable in that the actual cost and expenses of transporting each passenger and his baggage over defendant's road are more than three cents a mile, and that by reason thereof defendant is compelled to transport passengers at a loss, is insufficient, on demurrer, in failing to show that the rate fixed by the act will not yield a profit upon defendant's aggregate passenger and freight business."

Said the New York Court in the matter of *Auburn & W. R. Co., supra:*

> "It thus seems to be settled by authority that where a State, either by statute or through the order of railroad commissioners, requires a railroad to establish a station at a particular place on the line of its road, such statute or order is not to be overthrown by the Courts as unreasonable merely because the establishment or maintenance of such station would prove unremunerative, and regard is to be had to the financial ability of the railroad, in view of its entire business,

to establish and maintain such station; that a statute or order of railroad commissioners establishing a station or fixing rates of transportation is not to be interfered with except upon clear and satisfactory evidence showing that it is unjust and unreasonable."

In *Morgan's La. & T. R. & S. S. Co. v. Railroad Commission, supra,* the Supreme Court of Louisiana, in defining the powers possessed by the Railroad Commission, said:

"They extend to matters concerning public comfort and convenience, and in the consideration of matters of comfort and convenience the number of persons who may be concerned or interested in some particular matter at some particular point enter as important factors in determining what is to be done. The Commission cannot ignore the comfort and convenience of numbers of citizens on a line of travel or conveyance, to base their action exclusively upon a consideration of the amount of dollars and cents which may be involved. * * * In the present instance it cannot be claimed that the Southern Pacific road, either in the operation of its line as a whole or that part of it which falls within the limits of Louisiana, has not been and is not remunerative. * * * We do not think the point is made that after the business of the railroad corporation had made it fairly remunerative the Commission is without general authority to direct that a portion of the 'surplus' profits (if that expression can be used) should be applied to the promotion of the comfort and convenience of the people along the line of the road. When such a point in the business of the road is reached, the rights of the 'general public' come clearly into view."

The Supreme Court of Florida held, in *Pensacola, etc., R. R. Co. v. State of Fla., supra,* that—

"The Courts will not interfere or grant any relief to a railroad company upon a complaint made as to one or several rates only, or where the freight and passenger rates established by the commissioners are not assailed as an entirety."

The Supreme Court of Illinois held, in *The People v. St. L., A. & T. H. R. R. Co., supra,* that—

> "The sufficiency of the earnings of a railroad to justify the expense of running a separate passenger train over a certain branch line constituting part of the entire system is not to be determined by considering the profits of that branch alone, but of the whole business of the various parts of the road operated with the branch as one continuous line."

The same Court, in *Union Traction Co. v. City of Chicago, supra,* affirmed the ruling in *The People v. St. L., A. & T. H. R. R. Co.,* and held that, in considering the reasonableness of a rate for street-car service, it was necessary to consider the profits and earnings of the whole system of street railways. The following paragraph is taken from the opinion (p. 647):

> "But if, as this opinion holds, the Chicago Consolidated Traction Company is merely a part of the Chicago Union Traction Company, and owned and operated by the latter company, then it was necessary to show the profits and earnings of the whole system of railways embraced within the Chicago Union Traction Company, and the effect of the enforcement of the ordinance upon all the lines embraced within the whole system. Evidence of the earnings or expenses of a single mile or division of a system of railways is inadmissible to prove that a rate fixed by legislation is unreasonable."

The plaintiff in error should not be permitted, under the circumstances of this case as disclosed in the record, to contend that the order of the Commission is unreasonable, and that, under it, it has been deprived of its property without compensation and without due process of law, for the reason that, as admitted by one of its high officials, it broke the convenient and long-established connection at Selma in order to increase its own revenues, and at the expense of the convenience of the peo-

ple living along its line of railway and whom it was bound primarily to serve. This circumstance will be considered in connection with the question of determining the reasonableness of the order of the Commission. Let us take the case of rate tariff. Suppose a railroad company, for its own benefit and by its own conduct, should increase the costs of service beyond that which, in the absence of such conduct, would be the actual cost, can it be heard to say that the rate established is unreasonable because less than the cost of service? For instance, cannot extravagant and unreasonable salaries paid to officials be considered in determining the cost of service, as the same affects the reasonableness or unreasonableness of the rate? This question has been answered by this Court in *Chicago, etc., Railway Co. v. Wellman, supra* (p. 345):

> "A single suggestion in this direction: It is agreed that the defendant's operating expenses for 1888 were $2,404,516.54. Of what do these operating expenses consist? Are they made up partially of extravagant salaries—fifty to one hundred thousand dollars to the president and in like proportion to subordinate officers? Surely, before the Courts are called upon to adjudge an act of the Legislature fixing the maximum passenger rates for railroad companies to be unconstitutional on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for, if so advised, it might clearly appear that a prudent and honest management would, with the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the Court, it has not come to this: that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.'"

And we may ask, has it come to this, that a railway corporation earning nearly two millions of dollars annually from its operations in North Carolina alone be permitted to transfer from the purposes of local business one of its trains to through service, and to the end that its own revenues may be increased, at the sacrifice of the convenience of the people living along its line of railway, and, when called upon to comply with a reasonable order designed to promote the convenience of its own patrons, answer, "If we are to expend fifteen dollars per day to thus serve the people our property will be taken without due process of law and there will not be left of our two million dollars of annual net receipts earned from our business in North Carolina a sufficient 'compensation' to pay 'fixed charges' and any dividend, however small"?

The record shows (p. 153) that the net revenue of the plaintiff in error from its operations in North Carolina for the year 1903 amounted to $1,943,116.63. And yet the plaintiff in error alleges that if a loss of the comparatively trifling sum of fifteen dollars per day, or $5,475 annually, were sustained by reason of being forced to make the Selma connection, it would be taking property without due process of law and without compensation. It would only be a small and insignificant reduction of the enormous profits made by the plaintiff in error from its North Carolina business and by which it has been enabled to recently declare a dividend upon all of its stock, both common and preferred, of five per cent., after paying operating expenses and interest on alleged indebtedness, and yet have to its credit a clean-cut surplus of net earnings for the year 1903 of between three and four hundred thousand dollars.

It is respectfully submitted that the judgment of the Supreme Court of North Carolina should be affirmed.

ROBERT D. GILMER,
Attorney-General of North Carolina.

F. A. WOODARD,
Counsel for the North Carolina Corporation Commission, Defendant in Error.

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(19645)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1905.

(No. 15)

THE ATLANTIC COAST LINE RAILROAD COMPANY,

PLAINTIFF IN ERROR,

versus

THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF OF

ROBERT D. GILMER,

ATTORNEY-GENERAL OF NORTH CAROLINA,

AND

F. A. WOODARD,

COUNSEL FOR THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

E. M. UZZELL & CO., PRINTERS, RALEIGH.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

(No. 186)

THE ATLANTIC COAST LINE RAILROAD COMPANY,

PLAINTIFF IN ERROR,

versus

THE NORTH CAROLINA CORPORATION COMMISSION,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

SUPPLEMENTAL BRIEF.

The argument of the counsel for the plaintiff is founded upon a misconception of the order of the Corporation Commission and the facts upon which said order was based.

On page 12 of the plaintiff's brief the counsel, in stating what they conceived to be the question presented in the case, say:

> "Can the State require a railroad company to run a special daily train at a loss for the convenience of a limited number of passengers who wish to make close connection with a particular train on a crossing road, it appearing that it is already running sufficient trains to accommodate the general travel on its lines and has arranged its schedules to best accommodate general travel and connect with all connecting roads, and that its failure to connect with such particular train was due to a change of schedule on the crossing road to

which it was impracticable to conform by any change in the schedule of the train which had made the connection under the original schedule?"

The fundamental error into which the counsel have fallen is that the order of the Corporation Commission required the plaintiff in error to run a special daily train at a loss in order to comply with the judgment of the Commission. The Commission did not require by the terms of its order the Coast Line to run any special train, as by reference to the order of the Commission (see page 3 of former brief) will fully appear.

It is not necessary for the Coast Line to run a special train at a loss to perform the order of the Commission. On the contrary, the order can be effectuated either by the extension of the run of the Springhope train or the Plymouth train. The Corporation Commission so held, and this judgment of the Commission was sustained by the Supreme Court of the State, as will appear by reference to the opinion of the Court.

There is error also in the statement that the connection required to be made is only for a limited number of passengers. The jury answered in the affirmative the following issue: "Is it reasonable and proper that, for the convenience of the *traveling public*, the defendant company should be required to make such connection?"

This connection is a convenience for the general traveling public and not alone for the residents of that section of the State through which the lines of the Coast Line are operated. By reference to the map of North Carolina it will be seen that sixteen counties, containing a population of four hundred thousand, are dependent upon the Selma connection for the means of reaching the capital and other points in the central and western part of the State. Raleigh, the capital, is of course in many respects the most important city of the State. In it are located four female colleges, the State Industrial College for

Boys, and all the State institutions. The business relations between the east, west and central sections of the State are close and important. Thirty miles west of Raleigh is the State University. Twenty-five miles west of Raleigh is Trinity College, the college of the Methodist Church. One hundred miles west of Raleigh is the town of Greensboro, in which is located the female college of the Methodist Church and the Normal College for Girls. All these institutions are largely patronized by the people in the section affected by this connection. It is not true, as stated by said counsel, that the Coast Line has arranged its schedule to best accommodate the general travel and connect with all connecting roads. This was true while it maintained the schedule of train No. 39, with which it made this connection, which, according to the testimony of the general traffic manager of the Coast Line, was the most economical and convenient and the principal outlet for the people of eastern North Carolina to points west of Selma. But, according to the evidence of the general traffic manager of the Coast Line, the Coast Line had practically abandoned this connection, and at the time the order of the Commission was made was running no train with which connection was made with any passenger train of the Southern at Selma. The only train with which any connection with the Southern was made by the Coast Line was with the train which reached Selma at 9:40 P. M. and there connected with a freight train with passenger coach attached, which was scheduled to reach Selma at 10:40 P. M. This train of the Coast Line was operated between Richmond, Va., and Smithfield, a town four miles south of Selma, and was scheduled to leave Richmond at 4 P. M. and afforded no facilities for reaching points west of Selma to the larger proportion of the people from eastern North Carolina.

It is untrue that the failure of the Coast Line to make connection was due to a change of schedule of the Southern, as has been fully demonstrated in a former brief.

Answering the six objections to the order, it is respectfully submitted:

As to the first objection: The order was not the exercise of the police power of the State, in that it was not made to protect the health, morals or safety of the citizens, but was an order requiring the railroad to furnish facilities for the convenience of the traveling public. The power of the State to require facilities for the convenience of the public is as broad and ample as is the police power. "They" (meaning the railroads) "are organized for the public interest and to subserve, primarily, the public good and *convenience.*" Justice Peckham, in *Railroad v. Jacobson,* 179 U. S., p. 296. In *Goodson v. Minnesota,* 166 U. S., p. 430, the Court says: "It" (referring to the State) "may make any other reasonable regulation for their management in order to secure the objects of their incorporation, the safety, good order, *convenience* and *comfort* of passengers and the public."

2. The second objection proceeds upon the same erroneous idea that the order of the Commission required the plaintiff in error to increase the number of its trains. Such was not the effect of the order. It did not require any new train to be operated by the plaintiff, but simply declared that the conveniences of the traveling public which the plaintiff in error had been furnishing for the past ten years should not be lessened at the time when, on account of the increase in business and population, rather an increase in these facilities was required.

3. The objection made in the third place was that the order was not a uniform regulation of the railroads, but a direct inter-

ference in the business of a particular road. This order operated upon the Coast Line and Southern alike. The Coast Line had failed to fulfill the requirement of the statute, which provided that the connecting lines should be required to make as close connection as practicable for the convenience of the traveling public. No suggestion appears here that any other railroads operated in North Carolina were not conforming their schedules to this requirement of the statute. In discussing this objection to the order the counsel still asserts that to obey the order of the Commission the plaintiff in error must operate a new train at a loss. And it is again asserted that the connection was broken by the Southern Railway, when, as heretofore stated by the admission of the general traffic manager of the Coast Line, the connection had been abandoned by the Coast Line before the Southern Railway had made any change in its schedule.

4. The fourth objection is based upon the fundamental error running through the entire argument of the counsel, that the order compelled the railroad to run an additional train at a pecuniary loss. And this is the basis of practically every objection to the validity of the order.

The order of the Commission does not require the Coast Line to operate a new train at a loss, nor is it necessary for the Coast Line to operate a new train in order to obey the order.

The Corporation Commission, after full investigation—the plaintiff in error being represented at the hearing by its counsel and offering testimony—held that in order to carry into effect the order of the Commission it was unnecessary to run a new train at a loss. Upon an appeal by the plaintiff in error from this order the Supreme Court of the State affirmed the

order of the Commission, holding that the order did not require the operating of a new train, but that the connection could be made by the use of the Springhope or Plymouth train without any loss whatever to the company. This judgment was based upon the following admitted facts: The Coast Line operates a train running from Plymouth to Rocky Mount, a distance of seventy miles, scheduled to leave Plymouth at 7:30 A. M. and arrive at Rocky Mount at 10:30 A. M. Returning to Plymouth, this train is scheduled to leave Rocky Mount at 4 P. M. During these five and one-half hours that this train lays over at Rocky Mount the conductor, engineer and other members of the train crew are unemployed. The Commission held that the connection could be made by the use of this train during these five and one-half hours, the distance from Rocky Mount being forty-one miles. The only reason urged by the plaintiff in error why the connection could not be made by the use of this train was: First, that the engine used was an old engine, and with this engine it would not be practicable to make the schedule required to make the connection, which is only thirty miles an hour.

The engineer of the Plymouth train, who was examined upon the trial in the Superior Court as a witness for plaintiff, says (see p. 233 of the record):

> *Q.* "If you had the same size engine used on the Nashville branch you could make the run from Rocky Mount, leaving at 12:55, to Selma by 2:25 P. M., could you not?"
>
> *A.* "Yes, if I had the right of track."
>
> *Q.* "You could make it, including the time consumed for stops?"
>
> *A.* "Yes."

This was the schedule fixed by the order of the Commission for the train to leave Rocky Mount.

Another objection was that the engines used on the branch lines of the company were wood-burners, and coal engines were

used on the main line. It was admitted that a wood-burner engine could be converted into a coal-burner at an expenditure of $300, and that coal was as economical as wood.

The last objection was: That if the connection was made by the use of this train an additional train crew would be necessary, as the run was too long for one crew to make each day. There was, however, evidence in the record, upon the testimony of some of the witnesses of the plaintiff in error, that this run was not too long for a train crew to make daily. But, assuming this contention to be true, and that an additional train crew would be needed to make the connection by the use of this train, the additional cost of making the connection by the use of this train, according to the testimony of the plaintiff's own witnesses, would not exceed $27 per day:

Wages of the train crew (See testimony of W. Moncure, p. 61, record).	$11.60
Fuel (three and one-fifth tons of coal)	9.60
Water	1.00
Oil and waste	1.00
Wear and tear, interest on cost of engine and cars (See testimony of B. R. Lacy, p. 203; D. K. Wright, p. 270 of the record, witnesses examined on behalf of the plaintiff in error).	5.80

Thus we see that if the connection was made by the use of the Plymouth train the cost of operating the train would be $27, thus showing an insignificant loss. That the connection could be made by the use of the Springhope train without loss was clearly established by the testimony. The Coast Line operates a train from Rocky Mount to Springhope, a distance of twenty miles. This train is scheduled to leave Rocky Mount at 9 A. M., returning to Rocky Mount at 12 M.; leaves Rocky Mount at 4 P. M., returning at 7 P. M. The only reason given why it is

not practicable for the connection to be made by the use of this train was that the engine was a wood-burner, whereas it was shown that a wood-burner could be converted into a coal-burner by an expenditure of $300. The other reason given was that during the four hours that this train lay over at Rocky Mount the engineer and conductor were engaged in shifting cars. To make the connection by the use of the Springhope train the only additional expense would be:

Three and one-fifth tons of coal	$9.60
Water	1.00
Oil and waste	1.00
Wear and tear and interest on cars	5.80

As the train crew would be engaged three hours in making the run, we will charge the cost of operating this train with one-third of the wages of the train crew, $11.60, which would be $3.85; total cost, $21.25 per day. The jury having found the probable revenue to be derived by making this connection to be $25 per day, it is thus clearly demonstrated that the connection could be made by the plaintiff by the use of the Springhope train without incurring any loss, but an actual profit would result. This estimate is based upon the testimony of the witnesses examined on behalf of plaintiff in error. The plaintiff in error, therefore, in order to maintain its position that the order compelled the railroad to run an additional train at a pecuniary loss, asks this Court to reverse the finding of the Commission, which was sustained by the Supreme Court, and to adopt the ruling in this respect of the Superior Court Judge whose judgment was reversed by the Supreme Court of the State. The last objections urged by counsel to the order are based upon a misconception of the facts of the case. It is alleged that there is no evidence or finding that the Coast Line does not run sufficient trains to the points of junction with the Southern, or fails to connect with other trains than No. 35 at

Selma. The schedules of the Coast Line and Southern trains operated in North Carolina were introduced in evidence. These schedules show that the Coast Line operates only one train which connects with the Southern at Selma, and this train is scheduled to leave Richmond at 4 P. M., reaching Selma at 9:40 P. M.

The only trains operated by the Coast Line between Rocky Mount and Selma are scheduled as follows:

Leave Rocky Mount at.....	1:30 P. M.
Reach Selma at.....	2:50 P. M.
Leave Rocky Mount at.....	8:10 P. M.
Reach Selma at.....	9:38 P. M.
Leave Rocky Mount at.....	11:10 P. M.
Reach Selma at.....	12:22 A. M.

The trains of the Southern which pass Selma are scheduled as follows:

Reach Selma at.....	8:00 A. M.
Reach Selma at.....	2:25 P. M.
Reach Selma at.....	10:40 P. M.

So it can thus be seen that only one of the trains of the Coast Line connects with any of the trains of the Southern at Selma, and, as before stated, this connection is not with a regular passenger train of the Southern, but is with a mixed train with a slow schedule.

The complaint against the Coast Line was not in the arrangement of its schedule, but was the fact that, according to its own admissions, it had practically abandoned the schedule of the only train with which it made a connection at Selma with a passenger train of the Southern, which connection, according to the testimony of the general manager of the Coast Line, was the principal outlet for passengers from all eastern North Carolina to points west of Selma, and was admittedly a great convenience to the traveling public.

The suggestion that the Southern also broke the morning connection of the train at Goldsboro does not affect the question here. This connection was at once restored. The train with which the morning connection at Goldsboro was made was operated from Rocky Mount to Wilmington and is scheduled to leave Rocky Mount at 5 A. M., and it affords facilities only for people living along the line from Rocky Mount to Goldsboro, a distance of forty miles, and affords no facilities to the passengers of the Coast Line using any of the branch roads of that system. The statement on page 20 of the brief, "The Southern Railroad Company changed its schedule and thus broke a schedule connection which had been maintained by the Coast Line for ten years; naturally, if an extra train were to be run to correct this, the Southern Railroad should be required to run it," is without force.

It has been clearly demonstrated that, while the Coast Line did not change its published schedule, yet, as a fact, it practically broke the connection, according to the admissions of Mr. Borden, its general manager. Surely it cannot be insisted that the Coast Line was maintaining a schedule, when it appeared that from August, 1903, to January 11, 1904, the train of the Coast Line with which this connection was made arrived in Selma on schedule time only on two days, and the average daily delay in this train in arriving at Selma during this period was thirty-four minutes. An examination of the statement on page twenty-three of the record will show that while the average daily delay of this train in arriving at Selma was thirty-four minutes, yet, upon several days during this period, the said train arrived at Selma from one to two hours late. The Coast Line thus, according to its own admissions, having failed to maintain its schedule and thus breaking the connection, and admitting its inability in the future to maintain its schedule and thus make this connection, the Commission was confronted with the question as to the

best method of forcing the two companies to so arrange their schedules as to comply with the requirements of the statute, that "competing lines shall be required to make as close connection as practicable for the convenience of the traveling public." It will be noticed that as long as the Coast Line maintained its printed schedule the connection was always made, and it was only after this schedule of train No. 39 had been practically abandoned by the Coast Line that the Southern asked permission of the Commission to change its schedule, leaving Goldsboro thirty minutes earlier. This request on the part of the Southern was based upon the fact that the schedule of its train between Goldsboro and Greensboro was thirty-eight miles per hour, which they considered dangerous by reason of the condition of the track, and for the further reason that its connection with its through north and south bound trains at Greensboro would be facilitated by this change. The Coast Line admitted that it was impossible for it to maintain its published schedule; therefore, to refuse the request of the Southern to change its leaving time from Goldsboro would not have afforded any relief to the traveling public. Therefore, the Commission made the order simply requiring the Coast Line to deliver its passengers at Selma at 2:25 P. M. instead of 2:50 P. M., requiring the Southern to wait at Selma fifteen minutes if for any reason the Coast Line was late. The practical effect of the order was only permitting the Southern to move up its arriving time at Selma ten minutes. The Southern operates three trains from Goldsboro to Greensboro, as hereinbefore stated. The Coast Line having two trains, the Selma and the Springhope trains, with which this connection could be made, it would have been manifestly unjust to the Southern to have required it to put on a new train to have been operated between Selma and Greensboro and leaving Selma ten minutes after its schedule time for its regular westbound train.

Supreme Court of the United States.

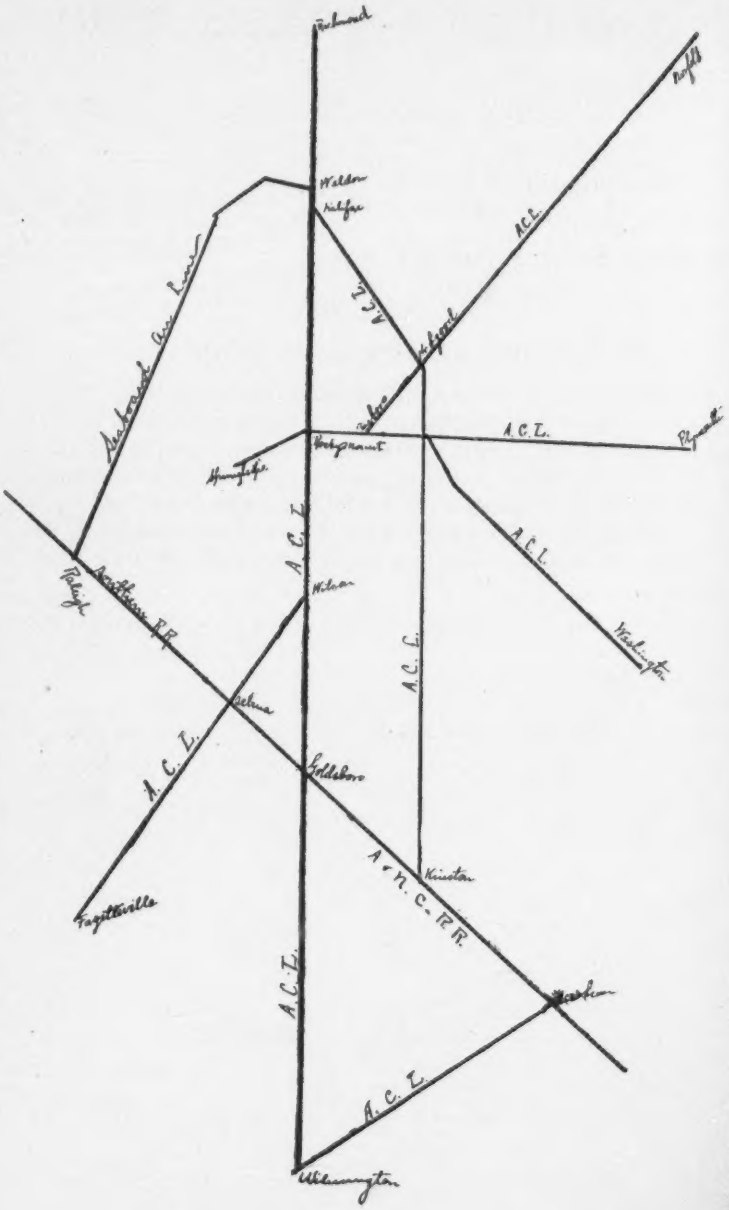
No. 15.—October Term, 1906.

The Atlantic Coast Line Railroad Company, Plaintiff in Error, vs. The North Carolina Corporation Commission.	In error to the Supreme Court of the State of North Carolina.

[April 29, 1907.]

Mr. Justice White delivered the opinion of the Court.

Did the order of the North Carolina Corporation Commission, the enforcement of which was directed by the court below, invade constitutional rights of the Atlantic Coast Line Railroad Company, hereafter spoken of as the Coast Line, is the question which arises on this record for decision. A sketch showing the situation of the railway tracks at and relating to the place with which the controversy is concerned was annexed by the court below to its opinion, and that sketch is reproduced to aid in clearness of statement.


Portsmouth
Norfolk
Weldon
Halifax
A.C.L.
A.C.L.
Roanoke Rapids Line
Tarboro
A.C.L.
Rocky Mount
Hamlet
A.C.L.
A.C.L.
Raleigh
Norfolk Southern R.R.
Wilson
A.C.L.
A.C.L.
Goldsboro
Kinston
A. & N. C. R.R.
Fayetteville
A.C.L.
A.C.L.
Wilmington

For years prior to October, 1903, the Coast Line operated daily an interstate train from Richmond, Virginia, through North Carolina to Florida. This train, known as No. 39, moved over the main track from Richmond to Wilson, North Carolina, thence by the track designated as the cut-off via Selma and Fayetteville to Florida. The train (No. 39) was scheduled to reach Selma at 2:50 in the afternoon and to leave at 2:55. The Southern Railway owned or controlled a road in North Carolina which crossed the Coast Line main track at Goldsboro and the cut-off track at Selma. On this road there was operated daily a train from Goldsboro via Raleigh to Greensboro, North Carolina, at which point connection was made with the main track of the Southern road. This Southern train, known as No. 135, left Goldsboro at 2:05 in the afternoon and Selma at 3 o'clock. Thus at Selma it connected with No. 39 of the Coast Line. The Coast Line also operated in North Carolina the branch lines shown on the sketch, which radiated easterly, and served a considerable area of territory. These branches connected with the main track at Rocky Mount, a station forty-two miles nearer Richmond than Selma. At Rocky Mount there also was a connection with a Coast Line road running from Pinners Point, near Norfolk, Virginia. Over this road also the Coast Line operated a train, which left Pinners Point in the morning and connected with the Coast Line train No. 39 at Rocky Mount. The departure of the train in question from Pinners Point was so arranged as to enable boats timed to arrive at Norfolk during the night or early morning to make, by ferry to Pinners Point, a morning connection with the train. On the 3d of October, 1903, the Southern Railway notified the North Carolina Corporation Commission of a contemplated change of schedule on its line from Goldsboro via Raleigh to Greensboro. By the change, which was to go into effect on the 11th of October, Southern train No. 135, instead of leaving Goldsboro at 2:05, would leave at 1:35 in the afternoon, and would leave Selma at 2:25 instead of 3. As a result, the connection at Selma between the Coast Line train No. 39 and the Southern train would be broken. The North Carolina Corporation Commission, by letter, on the 6th of October, called the attention of the general manager of the Coast Line to the contemplated change of time by the Southern, and requested that line to advance the time of No. 39 to enable that train to reach Selma at 2:25, thus continuing the connection with the Southern. On the 12th of October the superintendent of transportation of the Coast Line answered. He stated that the schedule of train No. 39 from Richmond to Selma was already so fast that it was very difficult to make the connection at Selma, and that it would be impossible to advance the time of arrival at Selma as requested. It was besides represented that to do so would require a

breaking of the connection made with the Norfolk train at Rocky Mount and would disarrange the running time of the train south of Selma and disturb connections which that train made with other roads south of that point. However, it was pointed out that as train No. 39 did not originate at Richmond, but was a through train made up at New York, carried from thence to Washington by the Pennsylvania and from Washington to Richmond by the Richmond, Fredericksburg and Potomac, that negotiations would be put on foot with those roads with an endeavor to secure an acceleration of the time of the departure of the train from New York and Washington, so as thereby to enable an earlier departure from Richmond. On the 11th of October the change of time became operative and the connection at Selma was broken.

A complaint having been lodged with the corporation commission because of the inconvenience to the public thereby occasioned, both the Southern and Coast Line were notified that a hearing would be had concerning the subject on the 29th. On that day the railways, through their officials, appeared. The Southern represented that its change in time was because it was absolutely dangerous to operate its train at the speed required by the previous schedule, and indeed that the lengthened schedule was yet faster than desired. The Coast Line reiterated the impossibility of changing the schedule of train No. 39 from Richmond to Selma unless there was a change between New York and Richmond. It stated that there was to be a meeting in Washington on November 6 of the representatives of various roads in the South, and that it hoped, as the result of that meeting, to so arrange that No. 39 would be scheduled for delivery at Richmond at an earlier hour, thus enabling its time to Selma to be advanced. The commission continued the subject for further consideration. On November 9 the superintendent of the Coast Line advised the corporation commission that at the meeting in Washington it had been impossible to obtain an earlier departure of the train from New York and Washington, but that the Pennsylvania still had the matter under consideration. Finally, in answer to urgent requests from the commission, by a letter of November 13 and telegram of November 14 the Coast Line informed the corporation commission that it regretted it could make no change in its schedule of train No. 39 because the Pennsylvania Railroad had definitively expressed its inability to make any change in the hour of departure of the train from New York, as to do so would be incompatible with the duties which the Pennsylvania Railroad owed to the public, to other roads and to its contracts concerning the transportation of the mail and express matter. Thereupon the corporation commission entered the following order:

"Whereas, the convenience of the traveling public requires that close connection be made between the passenger trains on the Atlantic Coast Line Railroad and the Southern Railway at Selma daily in the afternoon of each day;

"And whereas, it appears that such close connection is practicable:

"It is ordered that the Atlantic Coast Line Railroad arrange its schedule so that the train will arrive at Selma at 2:25 P. M. each day instead of 2:50 P. M., as the schedule now stands.

"It is further ordered that if the Atlantic Coast Line trains have passengers en route for the Southern Railway, and are delayed, notice shall be given to the Southern Railway, and that the Southern Railway shall wait fifteen minutes for such delayed trains upon receipt of such notice.

"This order shall take effect December 20, 1903."

The Southern, on receipt of the order, expressed its intention to comply. The Coast Line addressed to the commission a letter protesting against the order and requesting its withdrawal and asking for a further hearing. The letter making this request reviewed the previous correspondence. It pointed out that the connection at Selma had been a very old one and that its breaking was solely caused by the act of the Southern in changing the time of its train. It declared that the Coast Line at once, on hearing of the intention of the Southern to make the change, urgently requested that road not to do so. On this subject the letter said:

"On October 6th, I further advised the Southern Railway that if their train was scheduled to leave Selma at two twenty-five P. M. this would break the connection with our No. 39, and stated to them that the connection was a most important one, being the principal outlet for passengers en route from eastern Carolina to Raleigh and other points on their line, and that we hoped that they could see their way clear not to disturb the connection, as it was impossible for us to get No. 39 to Selma at an earlier hour than the present schedule, owing to the inability of northern connections to deliver the train to us at Richmond any sooner."

Proceeding to point out the failure of the negotiations with the Pennsylvania and recapitulating the previous statements concerning the rapidity of the schedule of No. 39 between Richmond and Selma, the exacting nature of its work and connections, the absolute impossibility of making it faster was insisted upon. Indeed, there was annexed to the letter a report of the time of No. 39 at Selma for a period of nearly five months, showing that the train had rarely made its connection at Selma.

The commission, after a hearing afforded officials of the Coast Line, suspended its prior order and fixed a day for a rehearing of the whole subject, both roads being notified to that effect. Upon the new hearing the matter was taken under advisement. On January 16 the commission stated the facts and its conclusions deduced therefrom. As to the operation of the two trains, their connection at Selma, the importance of this connection to the public and the breaking of the connection by the change of schedule, the facts

found were identical with those above previously recited. In addition it was found that the Coast Line train No. 39 from Richmond to Selma was not only a through train, but also operated as a local train between Richmond and Selma, making all local stops and daily handling in consequence one or two extra express cars. It was found in accordance with the official time sheets of the running of the train that it had arrived at Selma on schedule time only twice between August 1, 1903, and January 11, 1904. Considering the branch lines as marked on the sketch and the trains operated thereon and connecting with the main track at Rocky Mount it was found:

a. That a train was operated from Plymouth to Rocky Mount, which left in the morning at 7:30 and arrived at Rocky Mount at 10:35, where it remained until 3:55 in the afternoon, when it returned to Plymouth.

b. That the road also operated a train from Spring Hope on the westerly side of the main track to Rocky Mount, leaving Spring Hope at 11:20 in the morning, arriving at Rocky Mount at 12.10 in the afternoon and leaving there at 4, arriving at Spring Hope at 4:45. The commission concluded as follows:

"Assuming that the statements made by the Atlantic Coast Line Railroad Company are true—that it was for the past five months impossible for them to bring No. 39 to Selma by schedule time, to wit, 2:50 P. M., more than twice, and that this train was more than ten minutes late every day except twenty-four—we must conclude that it is impracticable to require them to make a faster schedule and place this train at Selma at 2:25 P. M. instead of 2:50 P. M.; and therefore this much of the former order is revoked and annulled; but the commission is of the opinion that it is practicable and that the convenience of the traveling public requires that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 P. M. and by or before 2:25 P. M. each day; that this can be done by extending the run of the Plymouth train to Selma instead of having it lie over at Rocky Mount as now, or by extending the run of the Spring Hope train to Selma instead of having it lie over at Rocky Mount as now. The distance from Plymouth to Rocky Mount is sixty-nine miles, and from Spring Hope to Rocky Mount is nineteen miles, and from Rocky Mount to Selma forty-two miles; or by providing a separate train for the service.

"And it is therefore ordered that the Atlantic Coast Line Railroad Company furnish transportation for passengers from Rocky Mount to Selma after 12:50 P. M. and by or before 2:25 P. M. each day.

"It is further ordered that the Southern Railway hold its train No. 135 at Selma fifteen minutes if for any reason the Atlantic Coast Line train connecting at that point is delayed.

"It is further ordered that this order take effect on and after the 26th day of January, 1904."

Before the date fixed for the taking effect of this order the Coast Line filed five grounds of exception to its validity and prayed another hearing. The first asserted the impossibility of making the connection from Rocky

Mount to Selma between the hours fixed by the commission by an extension of the run of either of the branch trains referred to in the order which the commission had rendered. The reasons principally relied upon to sustain the first exception were the inadequate character of the motive power of the branch road trains for operation on the main track, the speed at which the train would be obliged to travel and the congested condition of the business on the main track during the hours when the train from either of the branch roads would be obliged to use the main track for the purpose of making the connection. The second exception denied the possibility of making the connection by a special train from Rocky Mount to Selma within the time indicated, and besides asserted that such a train could not be operated without an actual loss. The power of the commission to compel the performance of "services without compensation to the company" was denied, and it was alleged that a taking of property without due process of law in violation of the State constitution and the Fourteenth Amendment to the Constitution of the United States would result from enforcing the order. The third exception denied the power of the commission under the State law to order the company to put on an extra train between Rocky Mount and Selma, and the fourth in effect reiterated the same ground. The fifth exceptien challenged the validity of the order as unreasonable, unjust and arbitrary and beyond the power of the commission to render, because ample and sufficient accommodations for passengers desiring to connect at Selma with the Southern road were afforded by the Coast Line entirely irrespective of the connection which had formerly existed between train No. 39 of the Coast Line and train No. 135 of the Southern. The trains thus relied upon as showing a wholly adequate service for the purposes stated were eight in number, and, as enumerated in the exception, are stated in the margin.*

After a new hearing at which further testimony was taken, the corporation commission in substance adhered to its former view and reiterated

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*1. The train from Rocky Mount, southbound, in the early morning, makes a close connection at Goldsboro at 6:50 o'clock with the Southern for Raleigh and all points West.

2. The trains from Norfolk and Richmond make close connection at Goldsboro and Selma with the night train on the Southern for Raleigh and all points West.

3. The train from Weldon to Kinston makes close connection at Kinston with the Atlantic and North Carolina train for Goldsboro, which train in turn makes close connection with the Southern at Goldsboro at 9:40 P. M. for Raleigh and all points West.

4. The train No. 39, from Washington to Jacksonville, is due at Selma at 2:50 P. M., and the accommodation train No. 183, on the Southern, from Selma to Raleigh and all points West, is scheduled to leave Selma at 3:25 P. M.

5. Train No. —, from Jacksonville to Washington, is due to arrive at Selma at

its previous ruling. In its findings of fact it pointed out the importance of the connection at Selma, the admissions to that effect made by the railroad and the fact that that connection afforded the principal means of travel between the eastern and western parts of the State. The grounds relied upon in the exception to show that an extension of the run of either of the local trains from Rocky Mount to Selma as previously ordered was impracticable, were reviewed and found to be without foundation. The trains which it was alleged afforded adequate means for connection between the western and eastern part of the State, irrespective of the connection formerly existing at Selma by train No. 39, were analyzed, and as a matter of fact the service afforded by these trains was held to be wholly inadequate. Thus, for example, whilst it was found that the first train relied upon—the one from Rocky Mount to Goldsboro, arriving there at 6:50 in the morning—made a connection with a Southern Railway train moving from Selma via Raleigh to Greensboro, it was pointed out that it was inadequate because the train had no connection at its point of departure, Rocky Mount, with any incoming train over the large area covered by the branch roads, which area, it was stated, embraced a population of four hundred thousand people. Hence it was found that to use that train any person in the territory covered by the branch roads would be obliged to leave home the day before and pass the night at Rocky Mount. The fourth train relied upon, that is, a connection made by Coast Line No. 39 at Selma under the new schedule with a later train over the Southern road for Raleigh, was found to be but a connection with a Southern freight train, having no passenger car, but only a caboose. The trains under the second, third and sixth headings, connecting at Goldsboro or Selma in the afternoon and night, were found to make a connection only with a slow train over the Southern road, doing a mixed passenger and freight business, and which made no adequate connection beyond Raleigh to the west. The objection to suggested route No. 8, that is, via Weldon, and thence by the Seaboard Air Line to Raleigh and points further west, was decided

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2:10 o'clock, and makes close connection there with the Southern, which leaves Selma at 2:25 P. M. for Raleigh and all points West.

6. Two trains leave Wilmington for the North, the first at 9:30 A. M., No. 48, and the other, No. 42, at 6:50 P. M. Both of these trains make close connections at Goldsboro with the Southern trains for Raleigh and all points West.

7. No. 34, leaving Smithfield at 7:00 A. M., makes close connection at Selma with the Southern going West for Raleigh and all points beyond, and the same train makes close connection at Weldon with the Seaboard train for Raleigh, and for Seaboard points South and West.

8. No. 102 leaves Goldsboro for Norfolk at 7:30 A. M., and makes close connection at Hobgood with No. 58, the train from Kinston to Weldon, and there with the Seaboard for Raleigh and points West.

to be that it was a longer route, more costly, and uncertain as to connections. The remaining suggested routes were in effect disposed of upon similar considerations to those above adverted to.

Considering the operation of an extra train from Rocky Mount to Selma or the extension of the run of one of the branch trains as directed in the previous order, and the objection that a loss would be entailed in the operating expenses for such train or trains, the commission treated that fact as immaterial, because it found as a matter of fact that the total receipts of the Coast Line in North Carolina, taken from business in that State, were sufficiently remunerative, and therefore that even if the train was operated at a loss, as that loss would not reduce the total earnings below what was an adequate remuneration for the whole business, the order would not take the property of the road without due process of law. Summing up its conclusions, the commission said:

"The commission is of the opinion that the facilities given heretofore by the Atlantic Coast Line Company to the traveling public should not be lessened; that the connection furnished passengers from the Washington branch, the Norfolk and Carolina branch, the Plymouth branch and the Nashville branch with No. 135, Southern Railway passenger train at Selma, and also for all points between Rocky Mount and Selma, for nearly ten years, should be restored; that if this cannot be done by the Atlantic Coast Line train No. 39, as formerly, on account of this train being heavier, containing usually one or more extra express cars, and in all usually ten or more cars, and on account of increase in business between Richmond and Selma, which necessitates longer stops, then other facilities should be furnished by the Atlantic Coast Line Company; that this connection, which was the principal outlet for passengers from eastern Carolina to Selma and other Southern Railway points for the last ten years, instead of being abandoned should be made permanent and certain, and that this result be accomplished by carrying out the order heretofore made in this court. It is ordered, therefore, that the exceptions be, and they are hereby, overruled."

The Coast Line, as authorized by statute, appealed to the Superior Court of Wake County, city of Raleigh, and the case was there tried *de novo* before a court and jury. The jury, under the instructions of the court, considered and responded to the eight questions, which follow:

"1. Is it practicable for train No. 39 of the Atlantic Coast Line Railroad, due to arrive at Selma at 2:50 P. M., to make connection at Selma with train No. 135, westbound, of the Southern Railway, due to leave Selma at 2:25 P. M.?

"Answer. No.

"2. Is it practicable to make said connection by extending the run of the Plymouth train daily from Plymouth to Selma and return, and if so, what would be the additional expense?

"Answer. No.

"3. Is it practicable to make said connection by the use of the Spring Hope train, and if so, what would be the additional expense?

"Answer. No.

"4. In order to make such connection would defendant company have to run an additional train on its main line from Rocky Mount to Selma?

"Answer. Yes.

"5. Is it practicable for said train to safely run the schedule prescribed in plaintiff's order, having due regard to the number of trains and number of stops, on defendant's main line from Rocky Mount to Selma?

"Answer. Yes.

"6. What would be the daily cost of operating such train from Rocky Mount to Selma and return?

"Answer. $40.00.

"7. What would be the probable daily receipts from such train?

"Answer. $25.00.

"8. Is it reasonable and proper that, for convenience of the traveling public, the defendant company should be required to make such connection?

"Answer. Yes."

The answers to the first four questions were the result of peremptory instructions by the court, and the responses to the last four were deduced by the jury from the testimony submitted to its consideration.

The court granted the prayer of the Atlantic Coast Line to that effect and rendered judgment on the verdict in its favor. The corporation commission was held to be without power "to interfere with the right of railway companies to regulate for themselves the time and manner in which passengers and property should be transported," provided only such companies complied with the existing statutory direction "to run one passenger train at least each way over its line every week day." On appeal the Supreme Court of North Carolina reversed the judgment. The facts found by the corporation commission were reiterated, and it was held that error had been committed by the court below in instructing the jury to give a negative response to the first three propositions. Indeed it was declared that the only essential proposition submitted to the jury was the eighth, which required it to be determined whether the connection at Selma was necessary for the public convenience. Treating the facts found by the commission as sustaining the conclusion reached by that body, it was decided that the commission had power to make the order, and that the exercise of the authority was not repugnant either to the Constitution of the United States or of the State. Notwithstanding the finding of facts made concerning the means by which the connection at Selma was to be performed, the court construed the order of the commission as not having been solely based upon the means of performance referred to in the findings and as embracing not only a choice of the methods referred to therein, but any other which the Coast Line might choose to adopt, provided only

it accomplished the purpose of the order. But whilst thus from one point of view, treating the order of the commission so as to render it unnecessary to pass upon the particular methods for making the connection at Selma referred to in the findings, the court yet reviewed the means of performance therein stated. In doing so it was decided that although to execute the order of the commission it might be imperative for the Coast Line to operate at a pecuniary loss a new train from Rocky Mount to Selma, or the extension with like result of the movement of one or the other of the branch trains from Rocky Mount to Selma, no violation of any right of the Coast Line protected by the Constitution of the United States or of the State would arise. This was based upon the finding by the court that the average net earning of the railroad from its business in North Carolina was of such a character that an adequate remuneration would remain after allowing for any possible loss which might arise from operating either of the trains in question. (137 N. C. 14.)

All the assignments of error challenge the correctness of the decision below on the ground of its repugnancy to the due process or equal protection clauses of the Fourteenth Amendment. The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their State business, to State regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine.* Accepting this general rule, the assignments of error rest upon the hypothesis that the order which the court below enforced was so arbitrary and unreasonable in its character as to transcend the limits of regulation and to be in effect a denial of due process of law or a deprivation of the equal protection of the laws.

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*Chicago, B. & Q. R. Co. *v.* Iowa, 94 U. S. 155; Peik *v.* Chicago & N. W. R. Co., 94 Ib. 164; Chicago, M. & St. P. R. Co. *v.* Ackley, 94 Ib. 179; Winona & St. Peter R. Co. *v.* Blake, 94 Ib. 180; Stone *v.* Wisconsin, 94 Ib. 181; Ruggles *v.* Illinois, 108 Ib. 536; Illinois Central R. Co. *v.* Illinois, 108 Ib. 541; Stone *v.* Farmers Loan & Trust Co. 116 Ib. 307; Stone *v.* Illinois Central R. Co, 116 Ib. 347; Stone *v.* New Orleans & Northeastern R. Co. 116 Ib. 352; Dow *v.* Beidelman, 125 Ib. 680; Charlotte C. & A. R. Co. *v.* Gibbes, 142 Ib. 386; Chicago & Grand Trunk R. Co. *v.* Wellman, 143 Ib. 339; Pearsall *v.* Great Northern R. Co., 161 Ib. 646, 665; Louisville & N. R. Co. *v.* Kentucky, 161 Ib. 677, 695; Wisconsin, M. & P. R. Co. *v.* Jacobson, 179 Ib. 287; Minnesota & St. L. R. Co. *v.* Minnesota, 186 Ib. 257; Minnesota & St. L. R. Co. *v.* Minnesota, 193 Ib. 53; Chicago, B. & Q. R. Co. *v.* Illinois, 200 Ib. 561, 584; Atlantic Coast Line *v.* Florida, 203 Ib. 256; Seaboard Air Line *v.* Florida, 203 Ib. 261.

As the public power to regulate railways and the private right of ownership of such property coexist and do not the one destroy the other, it has been settled that the right of ownership of railway property like other property rights finds protection in constitutional guarantees, and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment.* The result, therefore, is that the proposition relied upon is well founded if it be that the order which the court below enforced was of the arbitrary and unreasonable character asserted.

In coming to consider the question just stated it must be borne in mind that a court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertaining whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as in substance and effect to exceed regulation, and be equivalent to a taking of property without due process of law, or a denial of the equal protection of the laws. We shall not in analyzing the case undertake to review in their order the ten propositions of error found in the record and reproduced in the briefs of counsel, as each proposition, although numbered separately, but reiterate grounds of error to be found in the others. In other words, the various grounds of error are so interblended in the several propositions as to render it impossible to treat one as distinct from the other. All the grounds, however, which the propositions assert as establishing the arbitrary and unreasonable character of the order complained of may be embraced under four general headings, which we proceed to dispose of.

1. *That the order was arbitrary and unreasonable, because beyond the scope of the authority delegated to the corporation commission by the State law.*

As this proposition involves no Federal question and is concluded by the judgment entered below, we put the subject out of view. And, although not cognate to this proposition, to clear the way for the consideration of the substantial issues we also put aside the suggestion made in argument

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*Stone v. Farmers Loan & Trust Co., 116 U. S. 307, 331; Chicago, M. & St. P. R. Co. v. Minnesota, 134 Ib. 418, 455; Chicago & Grand Trunk R. Co. v. Wellman, 143 Ib. 339, 344; Reagan v. Farmers Loan & Trust Co. (No. 1), 154 Ib. 362, 399; St. Louis & San Francisco R. Co. v. Gill, 156 Ib. 649, 657; Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 241; Smyth v. Ames, 169 Ib. 466, 512; Chicago, M. & St. P. R. Co. v. Tompkins, 176 Ib. 167, 172; Minnesota & St. Louis R. Co. v. Minnesota, 186 Ib. 257; Chicago, B. & Q. R. Co. v. Illinois, 200 Ib. 561, 592.

that as the Southern Railway by its change of schedule originally rendered the connection at Selma impossible, therefore that road should have been compelled to restore the connection by a modification of the schedule or schedules of the trains by it operated. We put this suggestion aside because it does not seem to have been seriously urged in the court below, and besides is so directly refuted by the findings that we think it requires no further notice.

2. *The order was arbitrary and unreasonable, because when properly considered it imposed upon the Coast Line a duty foreign to its obligation to furnish adequate facilities for those traveling upon its road.*

This rests upon the assumption that as the order was based not upon the neglect of the Coast Line to afford facilities for travel over its own road, but because of the failure to furnish facilities to those traveling on the Coast Line who desired also to connect with and travel on the Southern road, therefore the order was in no just sense a regulation of the business of the Coast Line. This reduces itself to the contention that, although the governmental power to regulate exists in the interest of the public, yet it does not extend to securing to the public reasonable facilities for making connection between different carriers. But the proposition destroys itself, since at one and the same time it admits the plenary power to regulate and yet virtually denies the efficiency of that authority. That power, as we have seen, takes its origin from the *quasi* public nature of the business in which the carrier is engaged, and embraces that business in its entirety, which of course includes the duty to require carriers to make reasonable connections with other roads, so as to promote the convenience of the traveling public. In considering the facts found below as to the connection in question, that is, the population contained in the large territory whose convenience was subserved by the connection, and the admission of the railroad as to the importance of the connection, we conclude that the order in question, considered from the point of view of the requirements of the public interest, was one coming clearly within the scope of the power to enforce just and reasonable regulations.

3. *That the facilities afforded the public by the railroad were of such a character as to demonstrate that the extra burden which would result from the compliance with the order was wholly arbitrary and unreasonable.*

This rests upon the assumption that as there were several existing daily connections between trains of the Coast Line and those of the Southern at Selma, which might be availed of by those desiring to travel from eastern to western North Carolina and beyond, and, as besides, the proof established that another connection operating the same result was afforded by way of Weldon and the Seaboard Air Line to Raleigh and thence further west, therefore it was both arbitrary and unreasonable to superadd an unnec-

essary connection. Conceding, as must be done, that the nature and extent of the existing facilities furnished by a carrier for the public convenience are essential to be considered in determining whether an order directing an increase of such facilities is just and reasonable, and that the deficiency of facilities must clearly appear to justify an order directing the furnishing of new and additional facilities, we think the proposition here relied on to be without merit. Its error arises from assuming that adequate facilities were afforded at Selma or via Weldon and the Seaboard without reference to the order complained of. In view of the facts as to the connections at Selma and the Weldon route found by the commission and reiterated by the court, which we have previously stated and which we accept, we cannot escape drawing for ourselves the conclusion deduced both by the commission and the court below that the connections relied on were wholly inadequate for the public convenience, and, therefore, a state of things existed justifying the order.

4. *That, however otherwise just and reasonable the order may have been, it is inherently unjust and unreasonable because of the nature of the burden which it necessarily imposes.*

This proposition is based on the hypothesis that the order, by necessary intendment, directed the Coast Line to operate an additional train, although such train could not be operated without a daily pecuniary loss. The premise upon which this proposition rests would seem to be irrelevant, since the court below in one aspect of its opinion treated the order of the commission as not requiring the operation of an extra train from Rocky Mount to Selma. Yet, as the facts found by the commission and which were affirmed by the court would indicate that it was considered that the operation of such train was the most direct and efficient means for making the ordered connection, and as the court considered and passed upon the duty of the railroad to comply with the order, even if to do so it became necessary to operate the extra train at a loss, we think the proposition relied upon is open and must be decided. The contention is that the fact that some loss would result from the requirement that the extra train be operated, in and of itself, conclusively establishes the unreasonableness of the order and demonstrates that to give it effect would constitute a taking of property without due process of law in violation of the Fourteenth Amendment. Conclusive support for this contention, it is insisted, is afforded by the doctrine upheld in *Smyth* v. *Ames*, (169 U. S. 466,) and the cases which preceded that decision. The cases relied upon, however, only involved whether a general scheme of maximum rates imposed by state authority prevented the railroads from earning a reasonable compensation, taking into view all proper considerations as to the value of the property and the cost of operation, and, if so, whether the enforce-

ment of rates so unreasonably low would be unjust and unreasonable, and, therefore, be confiscation, that is, a taking of property without due process of law in violation of the Constitution of the United States. The principle upon which the cases in question proceeded was thus summed up by Mr. Justice Harlan, delivering the opinion of the court in *Smyth* v. *Ames*, (169 U. S. 526):

"A state enactment or regulations made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation, as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would, therefore, be repugnant to the Fourteenth Amendment of the Constitution of the United States."

But this case does not involve the enforcement by a State of a general scheme of maximum rates, but only whether an exercise of State authority to compel a carrier to perform a particular and specified duty is so inherently unjust and unreasonable as to amount to the deprivation of property without due process of law or a denial of the equal protection of the laws. In a case involving the validity of an order enforcing a scheme of maximum rates of course the finding that the enforcement of such scheme will not produce an adequate return for the operation of the railroad, in and of itself demonstrates the unreasonableness of the order. Such, however, is not the case when the question is as to the validity of an order to do a particular act, the doing of which does not involve the question of the profitableness of the operation of the railroad as an entirety. The difference between the two cases is illustrated in *St. Louis etc. Ry. Co.* v. *Gill*, (156 U. S. 649,) and *Minneapolis & St. Louis Rd. Co.* v. *Minnesota*, (186 U. S. 257.) But even if the rule applicable to an entire rate scheme were to be here applied, as the findings made below as to the net earnings constrain us to conclude that adequate remuneration would result from the general operation of the rates in force, even allowing for any loss occasioned by the running of the extra train in question, it follows that the order would not be unreasonable, even if tested by the doctrine announced in *Smyth* v. *Ames* and kindred cases.

It is insisted that, although the case be not controlled by the doctrine of *Smyth* v. *Ames*, nevertheless the arbitrary and unreasonable character of the order results from the fact that to execute it would require the operation of a train at a loss, even if the result of the loss so occasioned would not have the effect of reducing the aggregate net earnings below a reasonable profit. The power to fix rates, it is urged, in the nature of things, is restricted to providing for a reasonable and just rate, and not to compelling the performance of a service for such a rate as would mean the sustaining of an actual loss in doing a particular service. To hold to the con-

trary, it is argued, would be to admit that a regulation might extend to directing the rendering of a service gratuitously or the performance of first one service and then another and still another at a loss, which could be continued in favor of selected interests until the point was reached where by compliance with the last of such multiplied orders the sum total of the revenues of a railroad would be reduced below the point of producing a reasonable and adequate return. But these extreme suggestions have no relation to the case in hand. Let it be conceded that if a scheme of maximum rates was imposed by State authority, as a whole adequately remunerative, aud yet that some of such rates were so unequal as to exceed the flexible limit of judgment which belongs to the power to fix rates, that is, transcended the limits of just classification and amounted to the creation of favored class or classes whom the carrier was compelled to serve at a loss, to the detriment of other class or classes upon whom the burden of such loss would fall, that such legislation would be so inherently unreasonable as to constitute a violation of the due process and equal protection clauses of the Fourteenth Amendment. Let it also be conceded that a like repugnancy to the Constitution of the United States would arise from an order made in the exercise of the power to fix a rate when the result of the enforcement of such order would be to compel a carrier to serve for a wholly inadequate compensation a class or classes selected for legislative favor even if, considering rates as a whole a reasonable return from the operation of its road might be received by the carrier. Neither of these concesions, however, can control the case in hand, since it does not directly involve any question whatever of the power to fix rates and the constitutional limitations controlling the exercise of that power, but is concerned solely with an order directing a carrier to furnish a facility which it is a part of its general duty to furnish for the public convenience. The distinction between an order relating to such a subject and an order fixing rates coming within either of the hypotheses which we have stated is apparent. This is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of *Smythe* v. *Ames* or under the concessions made in the two propositions we have stated. Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary

facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance. A similar contention to the one we are considering was adversely passed upon in *Wisconsin etc. Ry. Co.* v. *Jacobson, supra.* That case involved the enforcement of an order of a State railroad commission directing a railroad company to acquire the necessary land and make a track connection for the purpose of affording facilities for the interchange of business with another road. The court, after holding that the order was not so unjust and unreasonable as to be repugnant to the Constitution of the United States, disposed of the contention that the order was void because compliance with it would necessitate the incurring of expense, by saying (179 U. S. 402):

"Although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error. (*Worcester* v. *Norwich & W. R. Co.*, 109 Mass. 112; *People ex rel. Green* v. *Dutchess & C. R. Co.*, 58 N. Y. 152, 163; *People ex rel. Kimball* v. *Boston & A. R. Co.*, 70 N. Y. 569; *People* v. *New York, L. E. & W. R. Co.*, 104 N. Y. 58, 67.)"

Affirmed.

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Test:

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